Supreme Court, U.S.
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No. 04-431

In The
SUPREME COURT OF THE UNITED STATES

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NANCY D. JONAS,
Petitioner,

vs.

TOWN OF YEMASSEE MUNICIPAL COURT,
Respondent.

On Petition For Writ of Certiorari
To The United States Court of Appeals
For The Fourth Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

Did the U.S. Court of Appeals for the Fourth Circuit, obtaining for themselves the complete record, incorrectly adjudge and avoid the issues including the conflict between the circuits and fail to apply applicable law as it related to the state actions and the Orders of the U.S. Magistrate Robert S. Carr entered September 26, 2003 and U.S. District Court Judge Sol Blatt, Jr. entered October 30, 2003 so as to be grounds for appropriate action by this Court.

Whether Articles III and VI, United States Constitution together with relevant federal law require that Certiorari be granted to consider the exercise of judicial authority and conduct which threatens the democratic form of government set forth in the U.S. Constitution and the laws of the land as well as other documents interpreting those laws.

PARTIES TO THE PROCEEDING

1. Town of Yemassee Municipal Court
   101 Town Circle
   Yemassee, SC 29945

2. Yemassee Municipal Judge William B. Wier
   101 Town Circle
   Yemassee, SC 29945

OPINIONS AND ORDERS BELOW

Opinions and Orders can be found in the Appendix according to date of issuance.

JURISDICTION

Orders of the United States Court of Appeals for the Fourth Circuit were entered on March 18, 2004, April 20, 2004 and May 11, 2004.

This Court's jurisdiction is invoked under 28 U. S.C. § 1254, 28 U.S.C. § 1331, 28 U.S.C. § 636, Article III, U.S. Constitution, Article VI, U.S. Constitution, Fifth Amendment and Fourteenth Amendment, Sections 1 and 5, U. S. Constitution, Eighth Amendment, U.S. Constitution, 42 U.S.C. § 1983, 18 U.S.C. § 242 and other authority as may be applicable.

TABLE OF CONTENTS

	Page
Questions Presented.....	i
Parties to the Proceeding	ii
Opinions and Orders Below	ii
Jurisdictional Grounds ... ...

TABLE OF CONTENTS *continued*

ARGUMENT I

Did the U.S. Court of Appeals for the Fourth Circuit, obtaining for themselves the complete record, incorrectly adjudge and avoid the issues, including the conflict between the circuits, and fail to apply applicable law as it related to state actions and Orders of the U.S. Magistrate Robert S. Carr entered September 26, 2003 and U.S. District Court Judge Sol Blatt, Jr. entered October 30, 2003 so as to be grounds for appropriate action by this Court..... 6-14

ARGUMENT II

Whether Articles III and VI, U.S. Constitution, together with relevant federal law require that Certiorari be granted to consider the exercise of judicial authority and conduct which threatens the democratic form of government set forth in the U.S. Constitution and laws of the land as well as other document interpreting those laws..... 15-16

CONCLUSION..... 17

TABLE OF CONTENTS TO APPENDIX

APPENDIX.....1a- 70a

TABLE OF AUTHORITIES

Page

CASES CITED:

Boddie v. Connecticut
401 U.S. 371 (1971) 15, 16
Brock v. Heckler
612 F. Supp. 1348 (D.S.C. 1985) 11
Chambers v. Mississippi
410 U.S. 284 (1973) 14
Chicago, B. & O. R. Co. v. Chicago
166 U.S. 226 (1897) 14
Cooper v. Aaron
358 U.S. 1 (1958) 8, 16
Cohens v. Virginia
191 U.S. (6 Wheat.) 264 (1821) 8, 16
Giangola v. Walt Disney World Co.
753 F. Supp. 148 (D.N.J. 1990) 4, 10
Hampton v. Hanrahan
600 F. 2d 600 (7th Cir. 1979) 12
Heniford v. American Motor Sales Corporation
471 F. Supp. 328 (D.S.C. 1979),
appeal dismissed, 622 F. 2d 584 (4th Cir.) 13
Hill v. Hawes
320 U.S. 520 (1944) 14
Horton v. State Street Bank and Trust Co.
590 F. 2d 403 (1st Cir. 1979) 11
Knights v. East Baton Rouge Parish School Bd.
735 F. 2d 895 (5th Cir. 1984) 12
Long v. Lockheed Missiles and Space Co.
783 F. Supp. 249 (D.S.C. 1992) 4, 10
Lugar v. Edmondson Oil Co.
457 U.S. 922 (1982) 9

Marbury v. Madison
5 U.S. (1Cranch) 137 (1803) 15
Monell v. Department of Social Servs.
436 U.S. 658 (1978) 9
Monroe v. Pape
365 U.S. 167 (1961) 9
Moody v. Hicks
956 S.W. 2d 398 (1997) 12
Osborn v. Bank of the United States
22 U.S. (9 Wheat.) 738 (1824) 9, 10
Pollard v. United States
352 U.S. 354 (1957) 14
Schacht v. U.S.
348 U.S. 58 14
St. Joseph Stock Yards Co., v. United States
798 U.S. 38 (1936) 11
Thompson v. City of Louisville
362 U.S. 199 (1960) 3
Thompson v. Immigrtion and Naturalization Service
375 U.S. 384 (1964) 14
Tongal v. Usery
601 F. 2d 1091 (9th Cir. 1979) 12
United States v. Saunders
641 U.S. F. 2d 659 (9th Cir. 1980) 11
Windsor v. Mcveigh
93 U.S. 274 (1886) 16
Wolff v. McDonnell
418 U.S. 539 (1974) 3

UNITED STATES LAWS AND STATUTES:

5 U.S.C. § 552 (FOIA)..... 6
18 U.S.C. § 242 6
28 U.S.C. § 636 ..... 3, 4, 10
28 U.S.C. § 1254 3
28 U.S.C. § 1257 3
28 U.S.C. § 1331 4
28 U.S.C. § 1446(d) 8
28 U.S.C. § 2254(b)(1)(A) 11, 12
42 U.S.C. § 1983 ..... *passim*

FEDERAL AND STATE RULES:

South Carolina Rules of Court,
Rule 7, SCRCP 7
Federal rule of Civil Procedure,
Rule 72(a), FRCP 10

CONSTITUTIONAL PROVISIONS:

8th Amendment, Excessive Fines Clause,
U.S. Constitution 6
14th Amendment, Sections 1 and 5,
U.S. Constitution 4, 5, 6, 8
Article I, U.S. Constitution 10
Article III, U.S. Constitution ..... *passim*
Article VI, U.S. Constitution ..... *passim*

OTHER AUTHORITY:

The Federalist Papers, No. 78 15

U.S. CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

SUPREMACY CLAUSE, ARTICLE VI, CLAUSE 2:

This Constitution, and the laws of the United States which shall be made in pursuance thereof; and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judges in every state shall be bound thereby; any thing in the Constitution or laws of any state to the contrary notwithstanding.

ARTICLE III, U. S. CONSTITUTION

Section 1. The judicial Power of the United States, shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish. The Judges, both of the supreme and inferior Courts, shall hold their Offices during good Behavior, and shall, at stated Times, receive for their Services, a Compensation, which shall not be diminished during their Continuance in Office.

Section 2. The judicial Power shall extend to all Cases, in Law and Equity, arising under the Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority; to all cases affecting Ambassadors, other public Ministers and Consuls; --to all Cases of admiralty and maritime jurisdiction;--to Controversies to which the United States shall be a Party;--to Controversies between two or more States;--[between a State and Citizens of another State;--]*between Citizens of different States;--between Citizens of the same State claiming Lands under Grants of different States, [and between a State, or the Citizens thereof, and foreign States, Citizens or Subjects.]*

In all Cases affecting Ambassadors, other public Ministers and Consuls, and those in which a State shall be a Party, the supreme Court shall have original Jurisdiction. In all the other cases before mentioned, the supreme Court shall have appellate jurisdiction, both as to the law and Fact, with such Exceptions, and under such Regulations as the Congress shall make.
*Changed by Eleventh Amendment.

EIGHTH AMENDMENT, EXCESSIVE FINES CLAUSE, U.S. CONSTITUTION

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

FOURTEENTH AMENDMENT, SECTIONS 1 AND 5, U.S. CONSTITUTION

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without undue process of law; nor deny to any person within its jurisdiction the equal protection of the laws.
Section 2. The Congress shall have the power to enforce, by appropriate legislation, the provisions of this article.

18 U.S.C. § 242:

Federal Court Relief against state action or official in criminal matter.

28 U.S.C. § 636:

(b)(1) Notwithstanding any provision of law to the contrary—

(A) a judge may designate a magistrate to hear and determine any pretrial matter pending before the court, except a motion for injunctive relief, for judgment on the pleadings, for summary judgment, to dismiss or quash an indictment or information made by the defendant, to suppress evidence in a criminal case, to dismiss or to permit maintenance of a class action, to dismiss for failure to state a claim upon which relief can be granted, and to involuntarily dismiss an action. A judge of the court may reconsider any pretrial matter under this subparagraph (A0 where it has been shown that the magistrate's order is clearly erroneous or contrary to law.

(C)(3)—A magistrate may be assigned such additional duties as are not inconsistent with the Constitution and laws of the United States.

28 U.S.C. § 1254:

Cases in thee courts of appeals may be reviewed by the Supreme Court by the following methods:

(1) By writ of certiorari granted upon the petition of any party to any civil or criminal case before or after rendition of judgment or decree;

(2) By certification at any time by a court of appeals of any question of law in any civil or criminal case as to which instructions are desired, and upon such certification the Supreme Court may give binding instructions or require the entire record to be sent up for decision of the entire matter in controversy.

28 U.S.C. § 1331:

The district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States.

28 U.S.C. § 1446 (d):

Promptly after filing of such notice of removal of a civil action the defendant or defendants shall give written notice with the clerk of such State court, which shall effect the removal and State court shall proceed no further unless and until the case is remanded.

42 U.S.C. § 1983:

Federal Court Relief Against Local Governments and State and Local Government Officers: 42 U.S.C. § 1983.

and other applicable constitutional provisions and laws.

No. _____

In The
SUPREME COURT OF THE UNITED STATES

October Term 2003

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NANCY D. JONAS,
Petitioner,
v.

TOWN OF YEMASSEE MUNICIPAL COURT
Respondents.

On Petition for Writ of Certiorari to the
United States Court of Appeals for the Fourth Circuit

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that the Petition for Writ of Certiorari will be granted in this proceeding.

STATEMENT OF THE CASE

The case involves violations of federal and constitutional law surrounding the issuance of a speeding ticket and subsequent state court proceedings in which the Town of Yemassee is knowingly complicit. The ticket was issued on Sunday, December 9, 2002 at 3:30 P.M. in the afternoon as the defendant was proceeding eastbound to Beaufort, South Carolina in the Castle Hall and Flowers area of the Town of Yemassee, County of Hampton on Highway 68. Part of the Town of Yemassee is located in Beaufort County. The posted speed limit in the area is 40 M.P.H. and the defendant was observing the speed limit. Just before a bridge, the speed limit changes to 25 M.P.H. though no signs are posted to provide notice of reduced speed eastbound as in the westbound direction. I braked to begin slowing down but just beyond the bridge (approximately one-tenth of a mile) was the officer. There was not adequate warning to drivers of the speed change so that there is adequate time to adjust speed. The bridge provided obstruction enabling a trap. The officer issued a ticket for a fine of $157.00 and elevated the speed to 47 MPH while the defendant had begun to slow down from an estimated speed of 43 MPH.

The defendant appeared at the hearing in Yemassee Municipal Court on January 9, 2003 to seek a dismissal upon these facts. Judge William B. Wier asked the officer who testified first if I had been difficult or abusive and the officer replied that he had made a note to that effect. Judge Wier

induced perjured testimony and sustained the fine of $157.00 declaring that the speeding conviction would result in four points and an extra $1,800 per year for insurance for three years. No arrest supported these false allegations which were introduced as a surprise at trial. When Judge Wier declined to reconsider his decision, intent to appeal was stated. When intent to appeal was stated, Judge Wier said that the appeal would have to be submitted to him for approval and he would decide if I could appeal. Constitutional rights were mentioned to establish a record but because of a sense of danger of these proceedings were barely discussed. In the next few days, I obtained an appellate form published by the South Carolina Court Administration which indicated the procedure for appeal. Using the form, I traveled to the Clerk's Office for the Court of Common Pleas in Hampton but contrary to the form instructions was directed to file in the Clerk of Court's Office in Yemassee. In filing the appeal, I was told by the Clerk, she did not know of a filing fee. By not filing in the correct court and not paying the fee, the case was never properly before the appellate court. The transcript of the January 9, 2003 hearing in the Yemassee Municipal Court was not obtainable although the transcript and Judge Wier's Return were material to the defendant's case and documented the constitutional issues. Efforts to obtain the documents were made through a Request for Production, a Motion to Compel served February 27, 2003 to the Circuit Court and a request pursuant to the Freedom of Information Act, 5 U.S.C. § 552. Months later, the Transcript became available when subpoenaed. The Circuit Court refused a Motion for Continuance to obtain the documents although

South Carolina Rules of Court, Rule 7, SCRCP, supported granting the continuance. The Clerk of the Circuit Court processed the Roster information incorrectly indicating the presiding judge would be J. Alexander McCauley when the name of the judge on the court order was Alexander S. Macauley. I did not attend the hearing because only Judge Wier's Return, whose contents were unknown, was before the court. The Circuit court issued a decision in Judge Wier's favor dismissing the appeal.

Prior to the circuit court appellate hearing, the Petitioner served a Petition for a Writ of Certiorari to the Supreme Court of the United States pursuant to 28 U.S.C. § 1257 and Thompson v. City of Louisville, 362 U.S. 199 (1960) line of cases citing the relevant Articles and Amendments of the U.S. Constitution and federal law. 42 U.S.C. § 1983 and Wolff v. McDonnell, 418 U.S. 539 (1974) are relevant.

Despite the notification that the case had been served to the Supreme Court of the United States prior to the hearing in Circuit Court, the Circuit Court continued proceedings dismissing the appeal. Judge Wier immediately mailed Notice of Unpaid Fine to the South Carolina Department of Public Safety on March 4, 2003 which resulted in suspension and revocation of driver's privileges making it impossible to renew my driver's license which is so often used for identification creating a considerable hardship.

The Supreme Court of the United States indicated by letter dated April 15, 2003 that the case be brought through federal or appellate state courts. Pursuant to that letter, the

action was filed in the U.S. District Court in Charleston, SC pursuant to 28 U.S.C. § 1331 and 42 U.S.C. § 1983, the 14th Amendment including § 5 and applicable case law which by reference is incorporated.

Procedurally the case was considered by U.S. Magistrate Judge Robert S. Carr pursuant to 28 U.S.C. § 636 and when Objections to his Order entered September 26, 2003 citing 28 U.S.C. § 636 (b)(1), Long v. Lockheed Missiles and Space Co., 783 F. Supp. 249 (D.S.C. 1992) with supporting citation, Giangola v. Walt Disney World Co., 753 F. Supp.148 (D.N.J. 1990) and other authority, U.S. District Court Judge Sol Blatt, Jr. overruled the Objections and affirmed the actions of the U.S. Magistrate by Order dated October 30, 2003. The Orders were appealed to the U.S. Court of Appeals for the Fourth Circuit November 4, 2003, U.S. District Court Clerk's responsive letter dated November 6, 2003. The U.S. District Court produced the Transmittal Sheet dated January 2, 2004, upon the Order of U.S. District Court South Carolina Chief Judge Joseph F. Anderson, Jr. dated December 30, 2003. The U.S. Court of Appeals for the Fourth Circuit noted in their Opinion dated March 18, 2004, the appeal was untimely and that the Petitioner failed to raise challenges to the post-judgment orders entered December 10, 2003, January 2, 2004 and January 21, 2004, February 9,2004. The filing of Notice of Appeal dated November 4, 2003 of the Orders of the U.S. District Court dated September 26, 2003 and October 30, 2003 transferred jurisdiction to the U.S. Court of Appeals for the Fourth Circuit.

The U.S. Court of Appeals for the Fourth Circuit issued Judgment March 18, 2004, issued its Order denying Rehearing/Suggestion for Rehearing *en banc* April 20, 2004 and issued the Mandate May 11, 2004 resulting in this appeal of all lower federal court orders.

ARGUMENTS

DID THE U.S. COURT OF APPEALS FOR THE FOURTH CIRCUIT, OBTAINING FOR THEMSELVES THE COMPLETE RECORD, INCORRECTLY ADJUDGE AND AVOID THE ISSUES, INCLUDING THE CONFLICT BETWEEN THE CIRCUITS, AND FAIL TO APPLY APPLICABLE LAW AS IT RELATED TO STATE ACTIONS AND ORDERS OF THE U.S. MAGISTRATE ROBERT S. CARR ENTERED SEPTEMBER 26, 2003 AND U.S. DISTRICT JUDGE SOL BLATT, JR. ENTERED OCTOBER 30, 2003 SO AS TO BE GROUNDS FOR APPROPRIATE ACTION BY THIS COURT.

The Order of the Yemassee Municipal Court and the actions of Judge William B. Wier in this case present issues that are of concern pursuant to provisions of the U.S. Constitution including the 8th and 14th Amendment and Articles of the U.S. Constitution, Article III and Article VI. 42 U.S.C. § 1983. Actions which brought the action under federal law involved the issue that the Petitioner was traveling at the posted speed of approximately 40 MPH and that the change to 25 MPH was sudden and without notice. Radar was approximately 100 feet beyond the 25 MPH sign. The manner of the stop was inherently unfair. Yemassee Mmunicipal Court Judge William Wier induced perjured testimony from the officer who was asked if I had been particularly difficult or abusive and the officer said that he had made a note to that effect. $157.00 was listed on the ticket which could be paid without court appearance. No mitigating factors were considered such as the fact that travel was at the posted speed. At the Court hearing on January 9,

2003 Judge Wier imposed the $157.00 fine, 4 points resulting in an increase in insurance to $1,800.00 per year for three years. When intent to appeal was stated, Judge Wier said I would have to give my appeal to him and he would decide if I could appeal. The S.C. Court Administration Form "Notice of Appeal" instructed that the appeal be filed with the Clerk of the Circuit Court yet that Court directed the appeal be filed with the Clerk of Municipal Court in Yemassee because they had trouble getting Returns otherwise and that the circuit court judge had changed the procedure. There was no response for the court transcript pursuant to the S.C Rules of Court, a request pursuant to the Freedom of Information Act or a Request for Production. Response was made when a U.S. Subpoena was served. There was no response to a request for a copy of the Judge Wier's Return prior to the circuit court hearing in Hampton County and a Motion for a Continuance was denied even though Rule 7, SCRCP allows a continuance. No filing fee was accepted. The Petitioner did not attend the hearing where only Judge Wier's Return was before the court for consideration. The hearings did not offer meaningful access or fair procedure. Prior to the hearing, a Petition for a Writ of Certiorari was filed with the Supreme Court of the United States pursuant to 42 U.S.C. § 1983, 18 U.S.C. § 242, Thompson v. City of Louisville, 362 U.S. 199 (1960) and Thompson line of cases. The Clerk's Office suggested that the case be adjudicated in either state court or a lower federal court. The case was transferred to the U.S. District Court, District of South Carolina, Charleston Division rather than state appellate courts because only Judge Wier's Return was before the state appellate court and would be the basis of the order appealed from. 42 U.S.C. § 1983 being an exception to the Anti-Injunction statute did not

serve to enjoin state action nor did state court consider the mandate of 28 U.S.C.§ 1446 (d) or did the federal court act on motions for injunction or production. Despite being served a copy of the Petition for Writ of Certiorari, the circuit court hearing proceeded and Judge Wier issued Notice of Unpaid Fine on March 4, 2003 resulting in the suspension and then revocation of driving privileges making it impossible to renew my driver's license so often used for identification. This action severely restricted travel. In an area where travel to town is a 70 mile round trip and where home is located in a hurricane region. Wolff v. McDonnell, 418 U.S. 539 (1974) assures that no person will be denied the opportunity to present to the judiciary allegations concerning the violations of fundamental constitutional rights. The 14th Amendment of the U.S. Constitution, Section 1, provides enforcement power to those rights in federal legislation, Section 5. 42 U.S.C. § 1983 is supported by legislative and judicial authority including in this case Article VI and Article VI's Supremacy Clause. Cohens v. Virginia, 191 U.S. (6 Wheat.) 264 (1821) and Cooper v. Aaron, 358 U.S.1 (1958) are cases where the Court relied on the Supremacy Clause of Article VI where a state exceeded its authority. 42 U.S.C. § 1983 is available when there is an allegation of a constitutional violation and where there is harassment by state judicial authority. "The very purpose of § 1983 was to interpose the federal courts between the States and the people, as guardians of the people's federal rights – to protect the people from unconstitutional action under color of state law." There is an overriding federal interest expressed in federal legislation and remedial goals to redress all violations of constitutional rights that occur under the aegis of state authority and power. The Court has ruled that

"misuse of power; possessed by virtue of state law and made possible only because the wrongdoer is clothed with authority of state law, is action taken 'under color of state law'. The Court held that under § 1983 litigation was available even though adequate state judicial remedies were potentially available in a majority opinion by Justice Douglas, Monroe v. Pape, 365 U.S. 167, 183 (1961). The Court has interposed § 1983 against a background of comity to state courts. More recently in Lugar v. Edmondson Oil Co., 457 U.S. 922, 929 (1982), the Supreme Court reiterated that "it is clear that in a § 1983 action, the statutory requirement of action 'under color of state law' and the state action requirement of the Fourteenth Amendment are identical. In 1978, in the landmark decision of Monell v. Department of Social Services, 436 U.S. 658 (1978), the Supreme Court expressly overruled Monroe's limitation on municipal liability.

Article III permitted jurisdiction even though there was no federal cause of action. The Court explained: " The controlling decision on the scope of Article III "arising under' jurisdiction is Chief Justice Marshall's opinion for the Court in Osborn v. Bank of the United States, 22 U.S. (9 Wheat.) 738 (1824) "Osborn..... reflects a broad conception of 'arising under' jurisdiction according to which Congress may confer on the federal courts jurisdiction over any case or controversy that might call for an application of federal law". The policy behind 42 U.S.C. § 1983 is that Congress could advance that policy by enacting a statute authorizing federal court jurisdiction or protective jurisdiction where it believes that federal court availability is necessary to protect important federal interests especially where there is state hostility. Professor Paul Mishkin argued that "where there is an articulated and active federal policy regulating a field, the 'arising under' clause of Article III permits the conferring of jurisdiction on the national courts of al cases in the area – including those substantively governed by state law." Congress' authority under Article III to determine the jurisdiction of federal courts provides that a case can

reviewed by federal court when it has the potential of lessening the right. Under Osborn, for the purposes of Article III, there is a federal question whenever federal law is a potential ingredient of the litigation. Federal law creates a cause of action. There is a question when the presence of a federal law in a state law action constituted a federal question.

The U.S. District Court Orders that resulted from the transfer of the case are the Order and Recommendation of the U.S. Magistrate Judge Robert S. Carr entered September 26, 2003. A U.S. Magistrate derives his authority from 28 U.S.C. § 636 (b)(1) and Article I of the Constitution. 28 U.S.C. 636 (c)(4) requires that his duties must not be inconsistent with the Constitution or laws of the United States. 28 US.C. § 636 states that a Remand Order is not within the power of a Magistrate. Federal Rule of Civil Procedure, Rule 72 (a), FRCP and Long v. Lockheed Missiles and Space Co., 783 F. Supp. 249 (D.S.C. 1992),citing Giangola v. Walt Disney World Co., 753 F. Supp. 148 (D.N.J. 1990) held that a Remand was dispositive , the equivalent of a dismissal, outside the power of a Magistrate Judge. Chief Judge Hawkins of the Charleston Division opinion is nationally recognized and the U.S. Court of Appeals for the Fourth Circuit has let stand the Long decision as representing the circuit. U.S. Magistrate Judge Carr cites a conflict between the circuits which raises a federal question reiterated in Petitioner's brief to the U.S. Court of Appeals for the Fourth Circuit. There are no local rules governing the matter. Judge Carr cites a 1st Circuit case to support his authority to Remand; however, in that case the Court did not reach the issue. Nevertheless, his Order

asserted "in light of the greater weight of recent authorities holding that an order of remand can be entered by a magistrate judge, the undersigned is entering an order". " It is therefore ordered that this case is remanded to the Court of Common Pleas for Hampton County." The magistrate Judge exceeded his authority as an Article I judge. A determination and issuance of any final order must derive from an Article III judge who remains ultimately responsible for the exercise or declination of a federal court's jurisdiction, Brock v. Heckler, 612 F. Supp. 1348 (D.S.C. 1985). Article III of the U.S. Constitution requires that the powers delegated to federal magistrates by Congress under Article I be limited to preserve the authority and integrity of Article III courts, United States v. Saunders, 641 F. 2d 659, 663 (9th Cir. 1980); Horton v. State Street Bank and Trust Co., 590 F. 2d 403 (1st Cir. 1979). The Supreme Court of the United States in its governance of Article III courts has found that Article III courts must be able to decide *de novo* all questions of law, constitutional issues and jurisdictional facts, St. Joseph Stock Yards Co. v. United States, 798 U.S. 38, 84 (1936) (Brandis, J. concurring). Inherently, when judicial issues are present, they must be decided by an Article III judge because of the text of the Constitution, separation of powers and also due process. The Magistrate's actions of assuming power delegated only to Article III judges raises a federal issue under Article VI, U.S. Constitution. The District Court Judge Blatt, Jr. erred in overruling the Petitioner's Objections to the Magistrate's Order and Recommendation and affirming the action by the Magistrate. As mentioned in the Federal Rules of Procedure, the term *de novo* signifies that the magistrate's findings are not protected by the clearly erroneous doctrine. The Magistrate's Order of Remand and Recommendation

disposes of claims and remedies knowing the issues have not been fairly tried in the state forum where remedy was first sought but where rights were abused. The Supreme Court has reiterated in case law that there is no requirement to use state administrative or judicial forums especially where rights have been abused. Such actions are the very rationale for suits removed from state courts. 42 U.S.C. § 1983 is supported by legislative and judicial authority. As Justice Brennan stated, "The requirements for the exercise of judicial power must be met at all stages of adjudication."

The application of 42 U.S.C. § 1983 is important because lower courts have held that federal officers may be sued under 42 U.S.C. § 1983 "when they are engaged in a conspiracy with state officials to deprive constitutional rights, Hampton v. Hanrahan, 600 F. 2d 600, 623 (7th Cir. 1979); Knights v. East Baton Rouge Parish School Bd., 735 F. 2d 895 (5th Cir. 1984); Tongal v. Usery, 601 F. 2d 1091 (9th Cir. 1979); Moody v. Hicks, 956 S.W. 2d 398 (1997). This definition of "under color of law" reflects the broad remedial goals of § 1983 to redress all violations of constitutional rights that occur under the aegis of state authority and power.

Appealability affects a substantial right. The U.S. District Court in his Order entered October 30, 2003 ordered that the Petitioner's "Objections to the Magistrate Judges' 'report and recommendation' are overruled; the 'report and recommendation is affirmed; and that the action is dismissed for lack of jurisdiction based on the following: " The Court cannot consider the Defendant's action because she has not exhausted all available state remedies, as required by § 2254 (b)(1)(A). The Defendant abandoned her appeal to the circuit

court, and has not attempted to appeal her conviction to the South Carolina Court of Appeals or South Carolina Supreme Court. Unless she demonstrates that such exhaustion is not required by law, § 2254 acts as a bar to consideration of her action." In his Order entered December 10, 2003, page 3, Judge Blatt, Jr. questions this assertion and the application of this jurisprudence. Removal jurisprudence, Heniford v. American Motor Sales Corporation, 471 F. Supp. 328 (D.S.C. 1979), *appeal dismissed*, 622 F. 2d 584 (4th Cir. 1980), states that Notice of Removal may occur within 30 days after the case becomes removable, U.S. Magistrate Judge 's Order and Recommendation entered September 26, 2003, 2nd page. The Petitioner submitted a timely Notice of Appeal along with the correct filing fee. By letter dated November 4, 2003, Deputy Clerk Lisa Richberg returned the fee and notice of appeal stating that on Saturday, November 1, 2003 the fee for appeal to the U.S. Court of Appeals for the Fourth Circuit had increased from $105.00 to $255.00. By Order dated December 30, 2003, entered January 2, 2004, Chief Judge Joseph F. Anderson, Jr. ordered that the Motion for Rehearing/Suggestion for Rehearing *en banc* be treated "as a notice of appeal for appeal purposes." The U.S. District Court, Deputy Clerk Lisa Richberg prepared the Transmittal Sheet dating it January 2, 2004. Jurisdiction now resided with the U.S. Court of Appeals for the Fourth Circuit. The U.S. Court of Appeals found the November 3, 2003 Notice of Appeal with payment of $105.00 untimely pertaining to the Order of U.S. District Court Judge Sol Blatt, Jr. entered October 30, 2003. The Court allowed that there was jurisdiction for Orders issued after January 2, 2003; the date the case was transmitted to the U. S. Court of Appeals for the Fourth Circuit and that the Petitioner erred in not posing challenges for consideration of orders void *ab initio* when

jurisdiction resided with the U.S. Court of Appeals for the Fourth Circuit. The Judgment filed March 18, 2004 incorrectly "affirms in part, and dismisses in part" based on the facts and the law and review is respectfully requested by this Court.

In Pollard v. United States, 352 U.S. 354, 359 (1957), the Court considered the preservation of issues and sufficiency of allegations. "The Court seemingly permitted questions not raised by the prisoner *pro se* below, saying: "Had the prisoner been represented by counsel in the courts below and upon his petition for Certiorari, we might well have considered those questions neither preserved below nor raised in the Petition. In Chambers v. Mississippi, 410 U.S. 284, 290-291 n. 3 (1973), the Court held that such a 14th Amendment claim "is properly before us", despite the fact that it had first been asserted below in a motion for a new trial after the trial had concluded; also Chicago, B. & Q. R. Co. v. Chicago, 166 U.S. 226, 231-232 (1897), proper to raise question in motion for a new trial.. The Petitioner believes the failure to deal with the questions is an evasion of jurisdiction and the federal claim. In Schacht v. U.S., 348 U.S 58, 64 (1970), the Petition for Certiorari was filed 101 days out of time. In Hill v. Hawes, 320 U.S. 520 (1944), it was held that a district court had power, even after the original appeal period had expired to vacate its judgment and to render a fresh one and the more recent Thompson v. Immigration and Naturalization Service, 375 U.S. 384 (1964) respecting the grant of extensions.

ARGUMENT II

WHETHER ARTICLES III AND VI, U.S. CONSTITUTION, TOGETHER WITH RELEVANT FEDERAL LAW REQUIRE THAT CERTIORARI BE GRANTED TO CONSIDER THE EXERCISE OF JUDICIAL AUTHORITY AND CONDUCT WHICH THREATENS THE DEMOCRATIC FORM OF GOVERNMENT ESTABLISHED BY THE U.S. CONSTITUTION AND LAWS OF THE LAND AS WELL AS OTHER DOCUMENTS INTERPRETING THOSE LAWS.

Alexander Hamilton in The Federalist Papers, No. 78, discussed the role of the judiciary and the constitutional and statutory imperatives and authorization for the Court to hear cases including Article III jurisdiction. The federal judicial power is crucial in determining the authority of the state courts in their actions. Federal due process rests upon state authority applying the law correctly and conferring the appellate remedy for effective exercise. The Court is the constitutional instrument for implementing the Constitution and Article VI. The Court system is meant to preserve the policies of supremacy and separation of powers which are significant in the system of government. Decisions are to be regulated by fundamental law. Essentially, to allow courts and judges to disregard the Constitution and laws violates Article VI undermining the Court's function of insuring the supremacy of the Constitution. Marbury v. Madison, 5 U.S. (1 Cranch) 137 (1803) establishes "it is emphatically the province and duty of the judicial department to say what the law is." Chief Justice John Marshall used the case to

establish the power of the judiciary and to articulate a role for the federal courts that survives to this day. Chief Justice Marshall explained the Court was authorized to give relief against arbitrary decision makers because " the very essence of civil liberty certainly consists in the right of every individual to claim the protection of the laws." Cohens v. Virginia, 19 U.S. (6 Wheat.) 264 (1821) and Cooper v. Aaron, 358 U.S. 1, 18 (1958) were key decisions in establishing the Court's authority. In Cohens, Chief Justice Marshall wrote "that state courts often could not be trusted to adequately protect federal rights." Cooper v. Aaron, established the power of the Court to review actions of state officials. In Boddie v. Connecticut, 401 U.S. 371, 379 (1971), it was written that "a state must afford to all individuals a meaningful opportunity to be heard if it is to fulfill the promise of the due process clause." Windsor v. Mcveigh, 93 U.S. 274, 277, 280 (1886) found meaningful access to courts a essential aspect of due process...founded in the first principles of natural justice."

The principles at stake discussed above are of national importance. A decision in the case would be influential throughout the country and would establish continuity of law resolving some of the conflicts in the law raised in this case.

CONCLUSION

For any one of the key issues of this Petition, all raising important questions of federal law that should be settled by this Court, Certiorari should be granted to the United States Court of Appeals for the Fourth Circuit.

Dated: July 18, 2004

Respectfully submitted,

Nancy D. Jonas

Nancy D. Jonas
Pro se

No. _____

In The
SUPREME COURT OF THE UNITED STATES

October Term 2003

-♦-

NANCY D. JONAS
Petitioner,

v.

TOWN OF YEMASSEE MUNICIPAL COURT
Respondents.

On Petition for Writ of Certiorari to the
United States Court of Appeals for the Fourth Circuit

APPENDIX

TABLE OF CONTENTS
TO APPENDIX

ORDERS		Page
	State Court-South Carolina	
APPENDIX A	Yemassee Police Dept. Disposition/Decision	*1-2a*
APPENDIX B	Return of Municipal Judge William B. Wier	*3a*
APPENDIX C	Judgment of Circuit Court Judge Alexander S. Macauley	*4a-5a*
	Federal U.S. District Court-South Carolina	
APPENDIX D	Order and Recommendation U.S. Magistrate Judge Robert S. Carr entered 9/26/03	*6a-11a*
APPENDIX E	Order of the U.S. District Court Charleston Division Senior Judge Sol Blatt, Jr. entered 10/30/03	*12a-16a*
APPENDIX F	Order of the U.S. District Court Charleston Division Senior Judge Sol Blatt, Jr. entered 12/10/03	*17a-20a*

TABLE OF CONTENTS-APPENDIX (2)

		Page
APPENDIX G	Order of the U.S. District Court Columbia Division Chief Judge Joseph F. Anderson, Jr. entered 1/2/04	*21a-22a*
APPENDIX H	Order of the U.S. District Court Columbia Division Chief Judge Joseph F. Anderson, Jr. entered 1/21/04	*23a-24a*
APPENDIX I	Order of the U.S. District Court Charleston Division Senior Judge Sol Blatt, Jr. entered 2/9/04	*25a-27a*
APPENDIX J	Order of the U.S. Court of Appeals for the Fourth Circuit filed 1/8/04	*28a-29a*
APPENDIX K	Judgment of the U.S. Court of Appeals for the Fourth Circuit filed March 18, 2004	*30a-34a*
APPENDIX L	Judgment of the U.S. Court of Appeals for the Fourth Circuit filed April 20,2004	*35a*
APPENDIX M	Orders of the U.S. Court of Appeals for the Fourth Circuit filed May 11, 2004	*36a-38a*

TABLE OF CONTENTS-APPENDIX (3)

	Supplemental Information	Page
APPENDIX N	Uniform Traffic Ticket dated 12/8/02	*39a-40a*
APPENDIX O	S.C. Form Notice of Appeal	*41a*
APPENDIX P	Hampton County Circuit Court Roster : postmarked 2/14/03	*42a*
APPENDIX Q	Notice of Unpaid Fine Judge William B. Wier dated 3/4/03	*43a*
APPENDIX R	Notification of Driver's License Suspension dated 3/31/03	*44a-45a*
APPENDIX S	Petitioner's Objections to Order and Recommendation of U.S. Magistrate Judge Robert S. Carr dated October 7, 2004	*46a-53a*
APPENDIX T	Letter from U.S. District Court Deputy Clerk of Court Lisa Richberg dated November 6, 2003	*54-55a*
APPENDIX U	Transmittal Sheet to U.S. Court of Appeals from U.S. District Court dated 1/2/04	*56a*

TABLE OF CONTENTS-APPENDIX (4)

		Page
APPENDIX V	Petition for Rehearing & Bill of Costs Re: Judgment of U.S. Court of Appeals-4th Cir. dated March 29, 2004	*57a-66a*
APPENDIX W	Petitioner's Motion for Stay of Mandate dated April 27, 2004	*67a-70a*

YEMASSEE POLICE DEPARTMENT
101 Town Circle
Post Office Box 577
Yemassee, South Carolina 29945
Tel: (843) 589-6315 • Fax: (843) 589-2950

YEMASSEE
FOCAL POINT OF FOUR COUNTIES

Date 01/09/03

The Town of Yemassee vs. Nancy Jonas

Ticket No. 55032CH

Court Date 01/09/03

THE DISPOSITION OF THE ABOVE REFERENCED MATTER IS AS FOLLOWS,

CASE STILL PENDING

CASE CONTINUED TO OFFICER'S NEXT COURT DATE OF ____

CASE PLACED ON JURY DOCKET; NEW COURT DATE SET FOR _____

CASE NOL PROSSED

CLIENT PLED NO CONTEST TO CHARGES

CLIENT FOUND GUILTY

CLIENT PLED GUILTY TO A LESSER CHARGE OF _____

CLIENT PLED GUILTY TO TOWN ORDINANCE 18.202 "CARELESS OPERATION" OFFENSE CODE 94.

ANY OTHER DISPOSITIONS_____

BOND WAS FORFEITED; NO MONEY OWED TO COURT

BOND WAS FORFEITED; CLIENT STILL OWES COURT
$_____BY_____

FILED
FEB 12 2003 10AM
(MDR) Clerk of Court
HAMPTON COUNTY

STATE OF SOUTH CAROLINA CITY OF YEMASSEE

vs.

Nancy D. Jonas – Defendant
Ticket No. 55032CH
2003-CP-25-36

On January 9, 2003 the defendant plead not guilty to a charge of speeding, doing 47 M.P.H. speed zone.

Leiutenant Chapman testified that he was operating stationary radar on Highway 68, south of the Highway 17 overpass. He testified that he clocked the defendant's vehicle going 47 miles per hour. This is a posted 25 M.P.H. zone.

The defendant testified that she was not going 47 M.P.H. but upon looking at her speedometer she was only going 43 M.P.H. She testified that the officer was clocking her right at the speed zone sign.

The officer was parked around a curve and could not see the oncoming traffic until they were almost two-tenths of a mile beyond the 25 M.P.H. sign.

I accepted the defendant's 43 M.P.H. statement and found her guilty of speeding going 43 M.P.H. in a 25 M.P.H. speed zone.

Respectfully submitted,
/s/ Bill Wier
Judge Bill Wier
Municipal Court Yemassee, South Carolina

February 10, 2003

STATE OF SOUTH CAROLINA JUDGMENT IN A SUMMARY APPEAL

COUNTY OF HAMPTON CASE NO. 03-CP-25-36

IN THE COURT OF COMMON PLEAS

FILED
12:30 pm
March 3, 2003
MDN
Clerk of Court
Hampton County

TOWN OF HAMPTON V. NANCY D. JONAS,
Respondent Defendant/Appellant

CHECK ONE

JURY VERDICT. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

DECISION BY THE COURT. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

ACTION DISMISSED (CHECK REASON): [ ] Rule 12 (b), SCRCP; [ ] Rule 41 (a), SCRCP (Vol. Nonsuit; [ ] Rule 43 (k), SCRCP (Settled); [ ] Other

ACTION STRICKEN (CHECK REASON): [ ] Rule 40 (j), SCRCP; [ ] Bankruptcy; [ ] Binding Arbitration, subject to right to restore, to confirm, vacate or modify arbitration award; [ ] Other_____

IT IS SO ORDERED AND ADJUDGED: [ ] See attached Order; [ ] Statement of Judgment by the Court:

Defendant/Appellant's appeal is **DISMISSED** for grounds stated upon the record.

Dated at Hampton, South Carolina, this 3rd day of March, 2003.

/s/ Alexander S. Macaulay, Presiding Judge
Alexander S. Macaulay, Presiding Judge

This judgment was entered on the ____day of _____, 2003, and a copy mailed first class this ____day of ____, 2003 to attorneys of record or to parties (when appearing pro se) as follows:

Nancy Jonas,Pro Se
ATTORNEY FOR THE PLAINTIFF

Kent Kirkland, Esq.
ATTORNEY FOR THE DEFENDANT

/s/ Mylinda D. Nettles
Mylinda D. Nettles
CLERK OF COURT

(REV. 5/00) SCRCP FORM 4

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA

Town of Yemassee,	)	**C/A No. 9:03-1508-08AJ**
	)	[*formerly* Case No. 03-CP-25-36)
Plaintiff,	)	
	)	**Order and Recommendation**
vs.	)	
	)	FILED (CCM)
Nancy D. Jonas,	)	SEP 25 2003
	)	LARRY W. PROPES, CLERK
Defendant.	)	CHARLESTON, SC
	)	ENTERED
		9-26-03

BACKGROUND OF THIS CASE

The above-captioned case was removed to the United States District Court for the District of South Carolina by the *pro se* defendant in a state court action. The underlying case was in the Magistrate's Court for Hampton County and before the Court of Common Pleas for Hampton Count on appeal. The exhibits appended to the Notice of Removal indicate that the Court of Common Pleas on March 3, 2003, issued a judgment in Case No. 03-CP-25-36.

DISCUSSION

A Defendant in a case in a state court may remove that case to a federal district court only if the state court action could have been originally filed in a federal district court. 28 U.S.C. § 1441. Generally, a case can be originally filed in a federal district court if there is diversity of citizenship under 28 U.S.C. § 1332 or there if there is so-called "federal question" jurisdiction under 28 U.S.C. § 1331.

Various federal courts have held that the removal statutes are to be construed against removal jurisdiction, and in favor of remand. *See, e.g.*, Cheshire v. Coca-Cola Bottling Affiliated, Inc., 758 F. Supp. 1098, 1102, 1990 U.S. Dist. LEXIS® 12565 (D.S.C. 1990) (collecting cases); and Bellone v. Roxbury Homes, Inc., 748 F. Supp. 434, 436, 1990 U.S. Dist. LEXIS® 14401 (W.D. Va. 1990).

It is well-settled that a Notice of Removal must be filed by a defendant in the state court action within thirty days after the compliant in state court is served or within thirty days *after* the case becomes removable. See 29 U.S.C. § 1446; and Heniford v. American Motor Sales Corporation, 471 F. Supp. 328 (D..S.C. 1979), *appeal dismissed*, 622 F.2d 584 (4th Cir. 1980) [Table]. The underlying case was filed in state court no later than January 9, 2003. *See* the Traffic Ticket (appended to the Notice of Removal) issued on December 8, 2002, which indicated that trial would be in the magistrate's court on January 9, 2003. Judgment was rendered in the state court case on March 3, 2003. The case was removed by the defendant on May 1, 2003. The Notice of Removal was **not** timely filed. Moreover, there is no indication that the case became removable under Heniford, supra.

Although a federal court is not bound by the parties' characterization of a case or its appropriate parties, a district court must first look at the plaintiff's complaint filed in a state court to determine if "federal question" jurisdiction is present. Lyon v. Centimark Corporation, 805 F.Supp. at 334-335.

The action in the Court of Common Pleas does not involve a federal question jurisdiction. *See* Gully v. First National Bank in Meridian, 299 U.S. 109, 112-113 (1936). Indeed, the underlying state court action appeals to be an appeal from the magistrate's court to Circuit Court (Court of Common Pleas). In addition, the state court case could not have been filed in this federal district court because diversity of citizenship does not exist since the plaintiff and the defendants are all residents of the State of South Carolina. The diversity statute, 28 U.S.C. §1332 (a), requires complete diversity of parties and an amount in controversy in excess of seventy-five thousand dollars ($75,000.00):

> (a) The district courts shall have original jurisdiction of all civil actions where the matter in controversy exceeds the sum or value of $75,000, exclusive of interest or costs, and is between-
>
> (1) citizens of different States[.]

28 U.S.C.§ 1332. Complete diversity of parties in a case means that no party on one side may be a citizen of the same State as any party on the other side. *See* Owen Equipment & Erection Co. v. Kroger, 437 U.S. 365, 372-374 (1978). Both the plaintiff and defendants are citizens of South Carolina, so complete diversity of parties is lacking I this case. *See* Strawbridge v. Curtiss, 7 U.S. (3 Cranch) 267 (1806).

The law is unclear whether an order or a Report and Recommendation should be entered in this case, *see* Long v. Lockheed Missiles & Space Co., 783 F. Supp. 249, 1992 U.S. Dist. LEXIS® 2033 (D.S.C. 1992). Most case law subsequent to Long V. Lockheed Missiles & Space Co. has

indicated the undersigned may enter an order of remand. See, e.g., Vaquilas Ranch Company v. Texaco Exploration & Production, Inc., 844 F. Supp. 1156, 1160-1163, 1994 U.S.Dist. LEXIS®6300 (S.D.Tex. 1994) (criticizing the rationale in Giangola v. Walt Disney World Co., 753 F. Supp. 148 (D.N.J. 1990), and distinquishing Long v. Lockheed Missiles & Space Co., supra); Holt v. Tonawanda Coke Corporation, 802 F. Supp. 866, 868, 1991 U.S. Dist. LEXIS®20886 (W.D.N.Y. 1991); McDonough v. Blue Cross of Northeastern Pennsylvania, 131 F.R.D. 467, 1990 U.S. Dist. LEXIS® 10921 (W.D. Pa.1990); and City of Jackson v. Lakeland Lounge of Jackson, Inc., 147 F.R.D. 122, 124, 1993 U.S. Dist. LEXIS® 4348 (S.D. Miss. 1993) ("This Court joins that group of courts which hold that a motion to remand is nondispositive and can be determined by a magistrate judge by final order.").

The United States Court of Appeals for the First Circuit in Unauthorized Practice of Law Committee v. Gordon, 979 F. 2d 11, 12-13, 1992 U.S. App. LEXIS® 29613 (1ST Cir. 1992), noted the existence of conflicting authorities, including Giangola v. Walt Disney World Co., supra, and Long v. Lockheed Missiles & Space Co., supra, but declined to resolve the issue:

> It is evident that the magistrate and the district court judge in the instant case treated the motion to remand as a nondispositive matter within the authority of the magistrate to determine by final order. While we note the existing and conflicting case law on this issue, we need not enter the fray at this time for we conclude that, in any event, we lack jurisdiction over this appeal..

Unauthorized Practice of Law Committee v. Gordon, supra, 979 F. 2d at 13.

In light of the greater weight of recent authorities holding that an order of remand can be entered by a magistrate judge, the undersigned is entering an order. Even so, this order can be appealed to a United States District Judge for review "under the clearly erroneous or contrary to law standard." Vaquillas Ranch Company v. Texaco Exploration & Production, Inc., supra, 131 F.R.D. at 467.

IT IS THEREFORE ORDERED that this case is remanded to the Court of Common Pleas for Hampton County.

If either party in the above-captioned case seek to "appeal" this Order or file objections to this Order (if this Order is treated as a Report and Recommendation), the Office of the Clerk of Court shall forward this case file and any objections or appeal(s) to a United States District Judge. See Fed. R. Civ. P. 72(a). The aforementioned conflicting authorities indicate that a United States District Judge can review this order "under the clearly erroneous or contrary to law standard" or can treat this Order as a Report and Recommendation.

To avoid the problems that arose in City of Jackson v. Lakeland Lounge of Jackson, Inc., supra, 147 F.R.D. at 123-124, **IT IS ORDERED that the Office of the Clerk of Court shall not immediately certify this Order to the Court of Common Pleas.** If both parties in the above-

captioned case fail to file an appeal of this Order or written objections to this Order (if this Order is treated as a Report and Recommendation) within fourteen (14) days after this Order is filed, the Office of the Clerk of Court shall then certify this Order to the Court of Common Pleas. If, however, either party files an appeal of this Order or written objections to this Order (if this Order is treated as a Report and Recommendation), the Office of the Clerk of Court, at the end of the fourteen-day period, shall forward the case file and any appeal or objections to a United States District Judge for a final disposition. The parties' attention is directed to the important notice on the next page.

Respectfully submitted,

/s/ Robert S. Carr
Robert S. Carr
United States Magistrate Judge

Charleston, South Carolina

9/24/03
(Date)

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
BEAUFORT DIVISION

FILED
OCT 30 2003 CCM
LARRY W. PROPES, CLERK
CHARLESTON, SC
ENTERED
10/30/03

Town of Yemassee,	)	
	)	Civil Action No. 9:03-
Plaintiff,	)	1508-08
-vs-	)	
	)	ORDER
Nancy D. Jonas,	)	
	)	
Defendant.	)	
	)	

This matter is before the Court on the pro se Defendant's removal of a speeding ticket from state court. By local rule, the case was referred to United States Magistrate Judge Robert S. Carr for initial review.

On September 25, 2003, the Magistrate Judge issued an order analyzing the issues and recommending that the action be summarily dismissed as improperly removed. Within the period allowed by law, the defendant filed objections to the report and recommendation.[1]

[1] There is apparently some question as to whether a United States Magistrate Judge may issue an order of remand, or whether he is required to issue a report recommending a remand. The Court finds the issue to be moot, as the defendant filed objections to the order and recommendation, and this Court is treating the matter as a report and recommendation.

The matter is now ripe for decision.

According to the record, the defendant received a speeding ticket in December 2002 in the town of Yemassee, South Carolina. At the subsequent hearing on the ticket, the complaining officer noted that the Defendant was verbally abusive towards him during the traffic stop. The municipal judge upheld the $157.00 fine and four points against her license. The Defendant thereafter attempted to appeal to the circuit court in Hampton County, feeling that the fine was "excessive (#1 SB, Jr.) and unjustified." She claims that she was directed to file the appeal with the Yemassee Clerk of Court. She also demanded a transcript of the initial hearing, which she claims she never received, and sought a stay of the proceeding.

The Defendant's appeal was placed on the January 2003 roster report for the criminal division of the circuit court, noting that her appeal was to be heard during the March term of court. The Defendant claims she requested a continuance, as well as an order for the municipal judge to file his return to the appeal. The solicitor's office refused to consent to a continuance. When the information she sought was not forthcoming, the defendant sought relief in the United States Supreme Court, which found it did not have jurisdiction. The circuit court dismissed her appeal in her absence, and the State of South Carolina subsequently revoked the defendant's driver's license as a result of her failing to pay the fine. The Defendant then "removed" the action to this Court.

The Magistrate Judge properly noted that, as a regular civil action, there was no federal diversity jurisdiction in this Court because all parties are residents of the State of South Carolina. The Magistrate Judge also correctly determined that, despite the Defendant's assertions, there is no federal question jurisdiction in this case. The Defendant sought to challenge the issuance of a traffic ticket, which is a matter exclusively reserved for state courts. E.g., S.C. Code §§ 56-5-1520, et seq. Her vow that, based on the alleged failure of the municipal court to turn over the transcript of her hearing and the improper placement of speed limit signs, the town is engaging in a fraudulent "conspiracy" against unwitting citizens is completely meritless. There is no evidence to suggest that this is the case. Likewise, the (#2 SB, Jr.) allegation that the failure to obtain the information she sought constitutes a violation of due process must be rejected. The Defendant requested and received a hearing on her appeal, but refused to appear at the scheduled hearing on her appeal. There is no indication that the defendant did not receive a full and fair opportunity to have her case heard.[2]

---

[2] The Defendant's contention that the circuit court had no jurisdiction over the appeal is meritless, as are the claims that the order dismissing her appeal contained "obvious defects"; these "defects," little more than typographical errors, had nothing to do with due process, notice, or the opportunity for the Defendant to be heard.

Her claims that the process was "manipulated deliberately to foreclose all rights" are without merit.

Alternatively, despite her mini-treatise on the law of federalism, it has been well established that the federal courts have very limited jurisdiction over state court criminal matters. By law, every violation of the posted speed limit is classified as a misdemeanor, which is a criminal offense. See S.C. Code § 56-5-1520. Because this is a criminal offense, the Court could conceivably apply post-conviction habeas corpus principles in 28 U.S.C. § 2254 to the Defendant's action.

The Court cannot consider the Defendant's action because she has not exhausted all available state remedies, as required by § 2254(b)(1)(A). The Defendant abandoned her appeal to the circuit court, and has not attempted to appeal her conviction to the South Carolina Court of Appeals or South Carolina Supreme Court. Unless she demonstrates that such exhaustion is not required by law, § 2254 acts as a bar to consideration of her action.

Based on the foregoing, it is

ORDERED that the Defendant's objections to the Magistrate Judge's report and recommendation are overruled; the report and recommendation is affirmed; and this action is dismissed for lack of jurisdiction.

IT IS SO ORDERED.

/s/ Sol Blatt, Jr.
Sol Blatt, Jr.
Senior United States District Judge

October 29, 2003
Charleston, S.C.

(#4 SB, Jr.)

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
BEAUFORT DIVISION

FILED
DEC 9 2003
LARRY W. PROPES, CLERK
CHARLESTON, SC
ENTERED
12/10/03

Town of Yemassee, Plaintiff,	)	Civil Action No. 9:03-1508-08
-vs-	)	
Nancy D. Jonas, Defendant.	)	**ORDER**

This matter is before the Court on the pro se Defendant's removal of a speeding ticket from state court. By local rule, the case was referred to United States Magistrate Judge Robert S. Carr for initial review. After the Magistrate Judge recommended dismissing the action as improperly removed, the Defendant filed objections. By order dated October 30, 2003, this Court rejected the objections and affirmed the report and recommendation.

The Defendant has now filed a "notice of motion & motion for rehearing *en banc*," charging that this Court's prior order, as well as the Magistrate Judge's report and recommendation, are legally and factually incorrect. The motion also seeks a writ of mandamus ordering the state judge to restore her

driver's license, which was suspended as a result of her failure to pay the imposed fine. Finally, the motion seeks this Court and the Magistrate Judge to recuse themselves from any additional proceedings because both were obviously biased against her based on prior rulings against her. (#1 SB, Jr.)

To the extent this motion consists of a motion to alter, amend or vacate the judgment, pursuant to Federal Rule of Civil Procedure 59(e), the motion is denied.[1] Rule 59(e) does not contain a standard for reviewing previous orders. See Pacific Ins. Co. v. American Nat'l Fire Ins. Co., 148 F. 3d 396, 402 (4th Cir. 1998); Hutchinson v. Staton, 994 F.2d 1076, 1081 (4th Cir. 1993). However, courts ruling on such a motion have regularly applied three factors: (1) to accommodate an intervening change in controlling law; (2) to account for new evidence not available at trial; or (3) to correct a clear error of law or prevent manifest injustice. Pacific Ins. Co., 148 F.3d at 402; Staton, 994 F.2d at 1081; see Woodrum v. Thomas Mem. Hosp. Found., 186 F.R.D. 350, 351 (S.D.W. Va. 1999); see Rouse v. Nielsen, 851 F. Supp. 717, 734 (D.S.C. 1994).

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[1] A "rehearing" and a "rehearing en banc" are not appropriate remedies in this Court, because it is not the "Fourth Circuit of the United States," as noted by the Defendant in her motion. Thus, insofar as the Defendant seeks additional recourse in furtherance of her dismissed action, the Court will construe the motion as a rule 59(e) motion. In addition, the Defendant raises for the first time in the present motion the prospect that this is an action pursuant to 42 U.S.C.§ 1983.

The Defendant does not allege a change in the controlling law, nor does she cite new evidence not previously available. After a careful review of the record, the Court concludes that the defendant has not demonstrated any clear error of law. She has not adequately proven that she has an actionable suit in this Court at this time. Moreover, Rule 59 was not intended to permit parties to re-argue claims already presented but rejected. See Pacific Ins. Co., 148 F.3d at 402; Rouse v. Nielsen, 851 F. Supp. at 734 ("Rule 59(e) motions are not at the disposal of an unsuccessful party to 'rehash' the same arguments and facts previously presented") (citations and internal quotations omitted); generally 11 Wright, Miller & Kane, Federal Practice and Procedure, Civil 2d § 2810.1 The fact that the Defendant is (#2 SB, Jr.) unhappy with the prior ruling does not give her "another bite at the apple." The defendant is certainly free to appeal this decision to the Fourth Circuit Court of Appeals, after filing the proper notices and paying the proper fees as set forth in the Rules of Civil Procedure and the Rules of Appellate Procedure.

However, to the extent that this action is deemed to be a request for writ of habeus corpus pursuant to 28 U.S.C. § 2254,[2] the Court denies leave

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[2] As noted in the previous order, the Defendant removed the pending criminal action against her (a misdemeanor traffic offense) directly to this Court, after first attempting to petition the Supreme Court of the United States. In an abundance of caution, the Court alternatively noted that this action could be construed as a § 2254 habeas corpus petition, because the underlying action was criminal in nature. This categorization is doubtful, however, given the requirement of the statute that the petition only applies to persons "in custody pursuant to the judgment of a State court." See Wright v. Bailey, 544 F.2d 737, 739 (4th Cir. 1976) (petitioner not "in custody" where disorderly conduct charge ended in fine with no provision for incarceration if fine not paid).

to appeal (pursuant to § 2253(c)(1)), for the reasons stated in its previous order, i.e., that the Defendant has not exhausted all available state remedies. See Lyons v. Lee, 316 F. 3d 528, 522-23 (4th Cir. 2003) (noting standard for issuing certificate of appealability is a "substantial showing of the denial of a constitutional right," meaning that "reasonable jurists" could debate whether the petition "should have been resolved in a different manner").

Based on the foregoing, it is

ORDERED that the Defendant's motion, to the extent that it requests the Court to alter, amend or vacate the judgment, is denied; that, to the extent this action is deemed to be a habeas corpus petition, leave to appeal such an action is denied pursuant to 28 U.S.C. § 2253(c)(1); and this action is ended.

(#3 SB, Jr.)

IT IS SO ORDERED.

/s/ Sol Blatt, Jr.
Sol Blatt, Jr.
Senior United States District Judge

December 8, 2003
Charleston, S.C.

#4

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF SOUTH CAROLINA

CHARLESTON DIVISION

FILED
JAN 2 2004
LARRY W. PROPES, CLERK
CHARLESTON, SC
ENTERED
1/2/04

Town of Yemassee, Plaintiff,

v.

Nancy D. Jonas, Defendant.

C/A No. 9:03-1508-8AJ

ORDER ON MOTION FOR REHEARING *EN BANC*

The defendant in this action has filed a document styled "Notice of Motion & Motion for Rehearing *En Banc*" which is directed to the "Judges of the United States District Court for the District of South Carolina, Charleston Division." Because this motion was not directed to a specific member of the district court sitting in Charleston and because there is no provision for *en banc* district court review of a district judge's decision, the matter was referred to the undersigned in my capacity as Chief United States District Judge.

At issue in this case is an order and recommendation by United States Magistrate Judge Robert S. Carr and a subsequent order adopting the report and recommendation entered by the Honorable Sol Blatt, Jr. The motion suggests that

> The case should be reheard because the court did not fairly consider the facts or applicable law. Further, the defendant would aver there is an apparent bias endangering due process rights.

Motion at 1.

There is no provision in the Federal Rules of Civil Procedure nor in the Local Rules for this District for *en banc* district court review of the decision of a magistrate judge or district judge. A litigant who is dissatisfied with a ruling, including a ruling on disqualification issues, must pursue an appeal in the United States Court of Appeals for the Fourth Circuit.

For the foregoing reasons, the motion is denied; however, the Clerk shall treat the motion as a notice of appeal for appeal purposes.

IT IS SO ORDERED.

/s/ Joseph F. Anderson, Jr.
Joseph F. Anderson, Jr.
United States District Judge

December 30, 2003
Columbia, South Carolina

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF SOUTH CAROLINA

CHARLESTON DIVISION

FILED
JAN 21 2004
LARRY W. PROPES,
CLERK
CHARLESTON, SC
ENTERED
1/21/04

Town of Yemassee, Plaintiff,	)	C/A NO. 9:03-1508-8AJ
v.	)	
	)	**ORDER**
Nancy D. Jonas, Defendant.	)	

The defendant has filed and served upon the undersigned United States District Judge a document styled "Petition for Leave to File Motion for a New Trial." The motion is apparently directed to the undersigned as Chief United States District Judge requesting "leave to proceed on her rule 59(b) motion and that he will consider other relief as may be proper."

In a previous submission to this judge, the defendant sought to have this court conduct an *en banc* review of a single United States District Judge's

decision. This court denied the motion, carefully explaining to the defendant that there is no provision in the law for *en banc* review of the decision of a single District Judge and that any appeal from a single District Judge must be taken to the United States Court of Appeals for the Fourth Circuit.

This order is being entered to reiterate to the defendant that neither the *en banc* court, nor this judge as Chief Judge, has any authority whatsoever to review a decision of another District Judge. Nor does the undersigned as Chief Judge have the authority to discipline, remove, transfer, or reassign a District Judge because of any alleged impropriety. For this reason, the motion is denied, and the defendant Nancy D. Jonas, is hereby advised that she need file nothing further with this judge. Any claim for relief should be filed with the District Judge to whom her case is assigned or with the United States Court of Appeals for the Fourth Circuit.

IT IS SO ORDERED.

/s/ Joseph F. Anderson, Jr.
Joseph F. Anderson, Jr.
United States District Judge

January 16, 2004
Columbia, South Carolina

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION

FILED
FEB 9 2004

Town of Yemassee, Plaintiff,	)	CIVIL ACTION NO.
-vs-	)	9:03-1508-08
Nancy D. Jonas, Defendant.	)	**ORDER**

Larry W. Propes,
Clerk
Charleston, SC
ENTERED
FEB 09 2004
ENTERED

This matter is before the Court on the pro se Defendant's removal of a speeding ticket from state court. Over the Defendant's objections, this Court affirmed the recommendation of United States Magistrate Judge Robert S. Carr and dismissed the matter for lack of jurisdiction on October 30, 2003. The Defendant filed a "motion for rehearing en banc" on December 1, 2003, which this Court construed as a motion to alter, amend or vacate under Federal Rule of Civil Procedure 59(e). After this motion was denied, the Defendant filed a second "motion for rehearing en banc" and directed it to the Chief Judge of this District. The Chief Judge noted, as did this Court in its prior order, that en banc review is not possible before the District Court, and construed the second motion for rehearing as a notice of appeal.

The Defendant has now filed a "petition for leave to file motion for a new trial," pursuant to Federal Rule of Civil Procedure 59(a). In this latest motion, the Defendant alleges that she has attempted to obtain the tape of her traffic court

hearing and the state municipal judge's return to her initial appeal, and that this evidence would affect the judgment in the present action. (#1 SB, Jr.) 15.

First, there was no trial in this case, so the motion is more properly characterized as a motion to alter, amend or vacate. See Fed. R. Civ. P. 59(a) (requiring a "trial by jury"). Second, the Court has already denied a motion to alter, amend or vacate, making this motion duplicative. Any further objections to this Court's orders must be taken up with the Fourth Circuit Court of Appeals. The Defendant is cautioned against filing additional duplicative and meritless motions with this Court, and her attention is directed to the sanctions provisions of Federal Rule of Civil Procedure 11, which applies equally to attorneys and pro se litigants.

Third, there is no indication that the Defendant has this "new evidence" (the hearing tape and/or the municipal judge's return) in her possession. Unless she actually has the evidence for the Court to consider, a motion for a new trial or to alter, vacate or amend thereupon is premature. Finally, this action was dismissed for lack of federal jurisdiction, not upon the merits of the evidence.[1] It is therefore highly unlikely, even if the Defendant possessed the hearing tape, that she could establish federal question jurisdiction via a vast "conspiracy" among county officials to set unlawful "speed traps" for unwitting citizens. (#2 SB, Jr.)

Based on the foregoing, it is

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[1] Indeed, the Town of Yemassee has not been served with a copy of these proceedings, as the case was dismissed on initial review. Because the Town has not yet been served, this Court could not order it to turn over any discovery, as the Defendant complains.

ORDERED that the Defendant's "petition for leave to file motion for a new trial" is denied; the Clerk of Court shall prepare and forward the record in these proceedings to the Fourth Circuit Court of Appeals.[2]

IT IS SO ORDERED.

/s/ Sol Blatt, Jr.
Sol Blatt, Jr.
Senior United States District Judge

January 6, 2004
(February)
Charleston, S.C.

(#3 SB, Jr.)

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[2] The Defendant herself acknowledges that motions to alter, amend or vacate, and for new trial, do not "affect the finality and the running of the time for appeal." The Court makes no comment upon or guarantee of the timeliness of the Defendant's notice of appeal.

FILED: January 8, 2004

UNITED STATES COURT OF APPEALS

for the

Fourth Circuit

04-1037 Yemassee Municipal v. Jonas
CA-03-1508-9-08AJ

ORDER TO PROCEED ON INFORMAL BRIEFS

This appeal was docketed on 1/8/04. The six-digit docket number appearing above shall be placed prominently on every paper filed by any party to this appeal, as well as on all correspondence addressed to the Court.

Pursuant to Local Rule 34 (b), this case shall be submitted on informal briefs. The informal briefing form is attached. Informal briefs shall be mailed to the Court no later than the following dates:

Appellant's Brief	2/2/04
(original and one copy)	----------

If appellant fails to file a brief, the appeal will be subject to dismissal for failure to prosecute, pursuant to Local Rule 45.

The Court will not consider issues which are not specifically raised in appellant's informal brief. The Court can impose sanctions for frivolous appeals. Sanctions may include monetary penalties and a ban on future filings.

If a transcript is necessary for consideration of an issue, appellant must order the transcript. Appellants who qualify to proceed without pre-payment of fees and costs may apply for preparation of the transcript at government expense. A motion for transcript at government expense should be filed in the district court in the first instance.

The Court obtains the record from the district court in informally briefed cases. Therefore, no appendix is necessary.

Extensions of briefing deadlines are not favored by the Court and are granted only for good cause stated in writing. Requests for extensions must be received by the Court before the expirations of the deadline.

JUDGMENT

FILED: March 18, 2004

UNITED STATES COURT OF APPEALS

for the

Fourth Circuit

No. 04-1037
CA-03-1508-9-08AJ

TOWN OF YEMASSEE MUNICIPAL COURT
Plaintiff - Appellee

v.

NANCY D. JONAS
Defendant - Appellant

Appeal from the United States District Court for the District of South Carolina at Beaufort

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In accordance with the written opinion of this Court filed this day, the Court affirms in part the judgment of the District Court and dismisses in part.

A certified copy of this judgment will be provided to the District Court upon issuance of the mandate. The judgment will take effect upon issuance of the mandate.

/ s / Patricia S. Connor

CLERK

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 04-1037

TOWN OF YEMASSEE MUNICIPAL COURT,
Plaintiff - Appellee,

versus

NANCY D. JONAS,
Defendant - Appellant.

Appeal from the United States District Court for the District of South Carolina, at Beaufort. Joseph E. Anderson, Jr., Chief District Judge; Sol Blatt, Jr., Senior District Judge. (CA-3-1508-9-08AJ)

Submitted: March 11, 2004 Decided: March 11, 2004

Before WIDENER, WILKINSON, and MICHAEL, CIRCUIT JUDGES

Affirmed in part and dismissed in part by unpublished per curiam opinion.

Nancy D. Jonas, Appellant Pro Se.

Unpublished opinions are not binding precedent in this circuit. See Local Rule 36 (c).

PER CURIAM:

Nancy D. Jonas seeks to appeal the district court's order affirming the magistrate judge's report and recommendation and dismissing her civil action for lack of jurisdiction. We dismiss the appeal in part for lack of jurisdiction because the notice of appeal was not timely filed as to this order.

Parties are accorded thirty days after the entry of the district court's final judgment or order to note appeal, Fed. R. App. P. 4 (a) (1) (A), unless the district court extends the appeal period under Fed. R. App. P. 4 (a) (6). This appeal period is "mandatory and jurisdictional." Browder v. Dir., Dep't of Corr., 434 U.S. 257, 264 (1978) (quoting United States v. Robinson, 361 U.S. 220, 229 (1960)).

The district court's order that Jonas seeks to appeal was entered on the docket on October 30, 2003. The notice of appeal was filed on January 2, 2004. Because Jonas failed to file a timely notice of appeal or to obtain an extension or reopening of the appeal period, we dismiss the appeal to the extent that it pertains to this order.

The notice is timely, however, as to the district court's orders denying Jonas's motions for rehearing en banc and her motion for leave to file a motion for a new trial. To the extent that Jonas is appealing these orders, we note that she was warned in the briefing order that this court would not consider issues not specifically raised in her informal brief. See 4th Cir. R. 34 (b). Nonetheless, Jonas failed to raise any challenges to the district court's orders denying her post - judgment motions in her informal brief and thus has failed to

preserve any issues for our review. Accordingly, we affirm these orders for the reasons stated by the district court. See Yemassee Mun. Ct. v. Jonas, No. CA-03-1508-9-08AJ (D.S.C. filed Dec. 9, 2003 & entered Dec. 10, 2003; Jan. 2, 2004; Jan. 21, 2004). We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before the court and argument would not aid the decisional process.

AFFIRMED IN PART,
AND DISMISSED IN PART

UNITED STATES COURT OF APPEALS

FOR THE FOURTH CIRCUIT

FILED
APRIL 20, 2004

No. 04-1037
CA-03-1508-9-08AJ

TOWN OF YEMASSEE MUNICIPAL COURT
Plaintiff – Appellee

v.

NANCY D. JONAS
Defendant – Appellant

On Petition for Rehearing and Rehearing En Banc

Appellant's petition for rehearing and rehearing en banc was submitted to this Court. As no member of this Court or the panel requested a poll on the petition for rehearing en banc, and

As the panel considered the petition for rehearing and is of the opinion that it should be denied,

IT IS ORDERED that the petition for rehearing and rehearing en banc is denied.

Entered for a panel comprised of Judge Widener, Judge Wilkinson, and Judge Michael.

For the Court,
/s/ Patricia S. Connor
Clerk

UNITED STATES COURT OF APPEALS

FOR THE FOURTH CIRCUIT

FILED
May 11, 2004

No. 04-1037
CA-03-1508-9-08AJ

TOWN OF YEMASSEEE MUNICIPAL COURT

Plaintiff – Appellee

v.

NANCY D. JONAS

Defendant – Appellant

ORDER

Appellant has filed a motion to stay the mandate pending application to the United States Supreme Court for a writ of certiorari.

The Court denies the motion.

Entered at the direction of Judge Widener, with the concurrence of Judge Wilkinson and Judge Michael.

For the Court,
/s/ Patricia S. Connor
CLERK

NOTICE OF ISSUANCE OF MANDATE

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

May 11, 2004

MANDATE

To: Clerk, District Court/Agency

From: Lisa Jernigan
Deputy Clerk

Re: 04-1037 yemassee Municipal v. Jonas
CA-03-1508-9-08AJ

HEREWITH IS THE MANDATE OF THIS COURT, ISSUED THIS DATE, ON THE JUDGMENT ENTERED BY TH COURT ON 3/18/04.

[ ] Order and Certified Copy of Judgment
[X] Opinion and Certified Copy of Judgment
[X] Order on Costs
[ ] Order dismissing appeal R 42 (b) or Local Rule 45
[ ] Other: _____
[ ] The record has been retained for use in case number _____

cc: Nancy D. Jonas

UNITED STATES COURT OF APPEALS

FOR THE FOURTH CIRCUIT

FILED
May 11, 2004

No. 04-1037
CA-03-1508-9-08AJ

TOWN OF YEMASSEE MUNICIPAL COURT

Plaintiff - Appellee

v.

NANCY D. JONAS

Defendant - Appellant

ORDER

Appellant has filed a bill of costs.

The Court denies the bill of costs.

For the Court - By Direction

/s/ Patricia S. Connor
CLERK

Form S-438 State of South Carolina
Rev. 10-88 Uniform Traffic Ticket

City or County of Yemassee, SC versus

First Name Middle name Last name
Nancy Dame Jonas

Street and No. City State
202 Tennis Villa Cr. Fripp Island SC

State Licensed Driver's License No. Dri. Lic. Class
SC 007544670 D

Veh. Lic. No. State Make of Veh Year Comm Veh
Auto Truck Comb.
155 Ker SC Mazd 99 Haz. Mt. Moped Mtrcyl Other

YOU ARE SUMMONED TO APPEAR BEFORE THE
TRIAL OFFICER

Name of Trial Officer State and No.
YEMA Munc. Court P.O. Box 577 101Town Circle

Date of Trial Time of Trial City State Zip Code
1 9 03 4 PM Yemassee SC 29945

Violation-Court Appearance Required Yes No
Violation Section No.
Speeding 47/25 56 – 5- 1520

Owner of Vehicle Date of Arrest
Same 12 / 8 / 02

Address of Owner Date of Violation
Same 12 / 8/ 02

Bail Deposited Name of Arresting Officer Rank
C / S L. M. Chapman Lt.

Description of Accused County Number
Race Sex Birthdate Ht. Hair Wt. Eyes Hampton 25
W F 10/17/43 54 Bln 140 Brn

Date Bail Rec'd By Badge District
802 6

CASE BEFORE Magistrate Mun. Court
Day S M T W T F S

Circuit Court Family Court
Federal Court Time of Violation Weather
Name of Trial Officer AM-1 Clear
If Different From Above 3:30 PM-2
Defendant Did Not Appear Appeared Distance in Feet
From Intersection

DISPOSITION Guilty Of CASTLE HALL AND FLOWERS
Forfieted Bond Pled. Nold Contendere
Trial By: Trial Officer Jury

VERDICT OF TRIAL IF ANY GUILTY DATE OF TRIAL IF ANY
MILES N E S W
NOT GUILTY 1 2 3 4
JAIL SUSPEND FINE AMT. COLLECTED AMT. SUSPENDED
HWY. NO. CITY
68 YEMA
Committed To: Arrest as Offence Code B. A. Level
Result of NO 41 0
Accident
Certified Correct Date

55032CH

DRIVER'S RECORD COPY

FINE : $ 157.00

STATE OF SOUTH CAROLINA _____
WARRANT / TICKET NUMBER
COUNTY OF BEAUFORT COUNTY

_____
PLAINTIFF

VS.

NOTICE OF APPEAL

_____
DEFENDANT

The plaintiff/defendant (circle one) _____ Hereby gives notice of appeal from the judgment of the Magistrate/ Municipal Court (circle one) in the above action, to the Circuit Court of Common Pleas, in the County of Beaufort.

This notice of appeal is made subsequent to personal notice of judgment which was received on the ___day of ___19___, in which Judge_____presided. (THE JUDGE'S NAME MUST BE FILLED IN OR THIS WILL NOT BE ACCEPTED BY THE CLERK OF COURT)

The appellant's exceptions to the judgment of the Magistrate / municipal court are set forth as follows:

_____

_____

(Attach additional sheets if necessary)
Dated_____ _____
Plaintiff, Defendant, or Attorney

IN ORDER FOR THIS TO BE FILED PROPERLY, YOU MUST INCLUDE PRESIDING JUDGE'S NAME, A COPY OF THIS APPEAL MUST BE FILED FIRST WITH THE CLERK OF COURT'S OFFICE AND THEN A CLOCKED IN COPY MUST BE SERVED ON THE MAGISTRATE OR MUNICIPAL COURT JUDGE WHO HEARD THE CASE.****

(THURSDAY) HAMPTON CNTY CLRK OF CRT PAGE 1
01/30/2003 B309 1220013

NON-JURY CASE
CP ROSTER REPORT

CASE NUMBER	PLAINTIFF/ATTNYS	DATE FILED	DEFENDANT/ATTNYS	DATE SERVED
(001)				
2002CP2500619	HAY, KEITHIE	11272002	TOWN OF HAMPTON WIER, BILL (000) 625-3699	
	NOA: CRIMINAL APPEAL		SUIT AMT: $ .00	

****

(002)				
2003CP 2500036	JONAS, NANCY D JONAS, NANCY D (000) 000 – 0000	01212003	CITY OF YEMASSEE WIER, BILL (000) 625-3699	
	NOA: CRIMINAL APPEAL PRE – TRIAL DATE: 00/00/0000		SUIT AMT: $ .00 TIME : :	

****

THERE WILL BE A TERM OF CRIMINAL COURT MARCH 3, 2003 AT 10:00 A. M. AT THE HAMPTON COUNTY COURT HOUSE. ALL APPEALS WILL BE HEARD AT THAT TIME. IF YOU ARE NOT PRESENT, YOUR APPEAL IS SUBJECT TO BE DISMISSED. THE HONORABLE J. ALEXANDER MCCAULEY WILL BE PRESIDING.

(ENVELOPE POSTMARK FEB 14 '03)

STATE OF
SOUTH CAROLINA -STATE SEAL PICTURED-

NOTICE OF FAILURE TO COMPLY WITH TERMS OF CITATIONYOU HAVE FAILED TO RESPOND TO THE CITATION DESCRIBED IN THIS NOTICE BY APPEARING IN COURT OR PAYING THE FINE WITHIN THE PERSCRIBED TIME LIMIT, AND AS A RESULT YOU HAVE BEEN TRIED IN YOUR ABSENCE AND FOUND GUILTY. FAILURE TO REMIT THE FINE WITHIN 15 DAYS FROM THE DATE SHOWN IN THE LOWER RIGHT CORNER OF THIS NOTICE WILL RESULT IN NOTIFYING THE LICENSING AUTHORITY IN YOUR STATE TO SUSPEND YOUR DRIVER'S LICENSE UNTIL THE FINE HAS BEEN PAID. PAYABLE BY CERTIFIED CHECK OR MONEY ORDER.

CITATION NO.	DATE OF VIOLATION	LOCATION OF VIOLATION	DOCKET NO. / SECTION VIOLATED
55032CH	12/08/02	CASTLEHALL RD.	56-5-1520

DESCRIPTION OF VIOLATION	FINE AND COSTS	TRIAL DATE
SPEEDING 47/25	$157.00	1/9/2003

DRIVER'S LICENSE NO.	STATE	DATE OF BIRTH	NAME OF COURT
007544670	SC	10/17/43	YEMASSEE MUNICIPAL COURT

NAME LAST	FIRST	MIDDLE	SEX	MAILING ADDRESS
JONAS	NANCY	D.	F	P. O. BOX 577

STREET ADDRESS	CITY	STATE	ZIP CODE
202 TENNIS VILLA CIRCLE	YEMASSEE	SC	29945

CITY	STATE	ZIP CODE	TELEPHONE
FRIPP ISLAND	SC	29920	AREA CODE (843) NUMBER 589-6315

REGIS. (TAG) No.	STATE	YEAR	MAKE	MODEL	AUTHORIZED BY	DATE
155 KER	SC	99	MAZDA	AUTO	WILLIAM WIER	03-04-0

FORM DL- 53 (REVISED 7-85)

1 DEFENDANTS NOTICE

SOUTH CAROLINA DEPARTMENT OF MOTOR VEHICLES
DIVISION OF MOTOR VEHICLES

03/ 31/2003

JONAS, NANCY DAME CUSTOMER NO: 24056248
202 TENNIS VILLA CIR FILE NO: 400047
FRIPP ISLAND, SC 29920-7401 DL NO: 7544670

OFFICIAL NOTICE

YOU MAY NOT DRIVE COMMERCIAL OR NON-COMMERCIAL MOTOR VEHICLES.

REASON: FAILURE TO PAY TRAFFIC TICKET SECTION: 56-25-10

VIOL DATE	TICKET #	VIOLATION
12/08/2002	55032CH	SPEEDING- OVER 10 MPH

COURT:
YEMASSEE MUNICIPAL COURT
PO BOX 577
YEMASSEE, SC 29945
(843) 589-6315

BEGINNING DATE: 12:01 AM 04 / 20 / 2003

ENDING DATE: When you receive notice from the department that this action has been cleared.

SPECIAL DRIVING PRIVILEGES:
There are no special driving privileges available to you. You may not drive until you have done the following:

COMPLIANCE:
Pay the fine for the ticket to the court. When the fine is paid, the Court will give you a compliance notice which shows the description of the violation, the date of the violation, the date the ticket was paid, and the ticket number. You must bring this compliance to your local DMV office or mail it to Driver Records, PO Box 1498, Columbia, SC 29216-0028. Note: It is your responsibility to give the department proof that this ticket has been paid.

REINSTATEMENT FEE:
You must pay a $100.00 reinstatement fee if your compliance notice shows payment on or after the suspension date. This fee can be paid at any DMV office or mailed to Driver Records, PO Box 1498, Columbia, SC 29216-0028. Make checks and money orders payable to DPS. Do not send cash through the mail.

THIS LETTER CONCERNS ONLY THE ACTION LISTED ABOVE AND DOES NOT CHANGE ANY OTHER NOTICES WE HAVE SENT TO YOU.

Driver Records Manager

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION

Town of Yemassee ....Plaintiff,)	C/A No. 9:03-1508AJ
)	(state court Case No.
)	03-CP-25-36)
vs.)	
)	**OBJECTIONS**
)	TO THE ORDER AND
Nancy D. Jonas .....Defendant.)	RECOMMENDATION
)	OF U.S.MAGISTRATE
_____)	ROBERT S. CARR

TO: JUDGES OF THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF SOUTH CAROLINA, CHARLESTON DIVISION

The Defendant responds to the Order and Recommendation of the U.S. Magistrate Robert S. Carr filed September 25, 2003, entered September 26, 2003 and served October 7, 2003 as follows:

The case came to the U. S. District Court in Charleston after being mailed to the Supreme Court of the United States pursuant to 28 U.S.C. § 1257 or alternative jurisdiction 28 U. S. C. § 1651. This service on March 11, 2003 effectively removed the case from state jurisdiction after judgment was rendered by the Hampton County circuit judge on March 3, 2003. The U.S. Supreme Court directed the filing of the case and federal court was selected because of the manipulation of the transcript by the municipal court. The procedural history recited in the Magistrate's Order and Recommendation is incorrect. The U.S. Supreme Court has recognized exceptions to the finality rule since relatively early in American history, Forgay v. Conrad, 47 U.S. (6 How.) 201 (1848).

Federal question jurisdiction codified at 28 U.S.C. § 1331 and the Thompson v. City of Louisville, 362 U.S. 199 (1960) line of cases are relevant because the case had been heard by the highest state authority in which review could be had. Chief Justice Hughes additionally established in Thompson that the justice of the case is an exception to a grant of jurisdiction.

Any subsequent state court proceeding would afford review to the March 3, 2003 order of the circuit court in Hampton where only Judge Wier's Return was before the state court. The transcript of the initial hearing January 9, 2003 and

the circumstances surrounding its subsequent unavailability support the contention that justice was not a consideration in either the circuit or municipal court of Judge Wier. The case was manipulated deliberately to foreclose all rights and later to insulate judicial authority from accountability. The conduct is so extreme that the case law which comes to mind is the U.S. v. Lanier, 33 F. 3d 639 (6th Cir. Tenn.) related to 18 U. S. C. § 242, which makes it a crime to deprive any person of any right secured by the U. S. Constitution or laws of the United States under color of law. The applicable section of the U.S. Constitution at Article VI, states that "This Constitution and the laws of the United States which shall be made in pursuance thereof: … shall be the supreme Law of the Land: and the judges in every state shall be bound thereby, any Thing in the Constitution or Laws of any State to the contrary notwithstanding." Thereafter, An Application for a Stay of the Proceedings was submitted to the Chief Justice William H. Rehnquist, Circuit Justice for the Fourth Circuit.

Jurisdiction resides in the federal court. The defendant moves the Court modify the caption to establish appropriate jurisdiction. In addition, the matter is "inherently judicial" so as to be properly before an Article III judge. The case was assigned to the U.S. Magistrate pursuant to 28 U.S.C. § 636 and the statute

requires that his duties must not be inconsistent with the Constitution or the laws of the United States.

In formulating Objections, 28 U.S.C. § 636, FRCP Rule 72, and the case law were examined to determine the scope of jurisdiction and authority granted to a Magistrate. The issues presented are whether the Motion to Remand is dispositive or non-dispositive under Federal Rules of Civil Procedure, Rule 72 and 28 U.S.C. § 636 (b) (1) and a determination of the appropriate standard of review based on that finding.

The defendant raises the issue whether an Order remanding the case was within the power of the magistrate or whether such a motion was dispositve, in which case the Magistrate should submit his report and recommendation to the district court judge for consideration upon the *de novo* standard. Important to the discussion are the constitutional dimensions and the conflict between the circuits.

This conflict between the circuits raises a federal question. The Magistrate states that "the law is unclear whether the Order or a Report and Recommendation should be entered in the case." In Long v. Lockheed Missiles and Space Co., 783 F. Supp.249 (D.S.C. 1992), Charleston Division, Chief Judge of the District Court Hawkins held that a motion to remand was dispositive outside the power of a

magistrate judge. "A motion to remand to state court was equivalent of a dismissal and thus was a 'dispositive motion' outside the power of a magistrate judge." Judge Hawkins further stated that the district court judge is not bound by the recommendation but retains responsibility for the final determination." As mentioned in the Federal Rules of Civil Procedure, the term *de novo* signifies that the Magistrate's findings are not protected by the clearly erroneous doctrine. The Magistrate's Order disposes of claims and defenses knowing the issues can not be fairly tried in that forum where rights were abused. Chief Judge Hawkins' opinion in Long is the law of the United States Fourth Judicial Circuit and is cited nationally. The Magistrate's Order is not sustainable.

Chief Judge Hawkins cited Giangola v. Walt Disney World Co., 753 F. Supp.148 (D.N.J. 1990) where that court held that a motion to remand was dispositive, "perhaps no issue is so accurately described as a determination which will destroy or uphold the court's jurisdiction...a remand order is the equivalent

of a dismissal. The Magistrate's order thus sought to effect an "involuntary dismissal of the action...as such, the magistrate was not empowered to hear the matter."

Chief Judge Hawkins wrote in 1992, "the analysis of the court in Giangola the preferred approach to this case because it combines both the statutory language with the practical effects of a dismissal from federal court." Further, there are no local rules governing this matter.

Final determination and issuance of any enforceable court order must derive from an Article III judge who remains ultimately responsible for the exercise or declination of a federal court's jurisdiction, Brock v. Heckler, 612 F. Supp.1348 (D.S.C. 1985). Article III, United States Constitution, requires that the powers delegated to federal magistrates by Congress, Article I, be limited to preserve the authority and integrity of Article III courts, United States v. Saunders, 641 F 2d 659, 663 (9th Cir. 1980); Horton v. State Street Bank and Trust Co., 590 F. 2d 403, 404 (1st Cir. 1979). Here, as in Giangola, the Order is not a legally valid determination.

The Supreme Court of the United States in its governance of Article III courts has found that Article III courts must be able to decide *de novo* all questions of law, constitutional issues and jurisdictional facts, St Joseph Stock Yards Co. v. United States, 798 U.S. 38, 84 (1936), (Brandis, J. concurring). Inherently, when judicial issues are present, they must be decided by an Article III judge. An Article III judge is required because of the text of the

Constitution and separation of powers but also based on due process consideration, U.S. Constitution 5th and 14th amendments, and where a federal question is raised because of the conflict between the circuits. A substantial question of law is raised also because of the improbability of meaningful district court review and the right to have an Article III judge preside.

"Essential attributes of judicial power are reserved to Article III courts," Justice O'Connor.

"The requirements for the exercise of the judicial power must be met at all stages of adjudication", Justice Brennan.

There is sufficient justification to sustain jurisdiction based on the case before the court and the law that is applicable.

WHEREFORE, the defendant prays that the court's Article III judge upon due consideration of the facts and the issues discussed above and elsewhere dismiss the action by summary motion in defendant's favor ordering Municipal Judge William Wier to pay all costs including punitive

damages as the court may determine.

Respectfully submitted,

Nancy D. Jonas
Charles Street
Post Office Box 1563
Beaufort, SC 29901
Tel: 800-791-1558

October 7, 2003

Seal of U.S. District Court

DIVISIONAL OFFICES
P.O. Box 835
Charleston, SC 29402
(843) 579-1401FAX 579-1402

P.O. Box 10768
Greenville, SC 29603
(864) 241-2700FAX 241-2711

P.O. Box 2317
Florence, SC 29503
(843) 676-3820FAX 676-3831

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA

OFFICE OF THE CLERK
1845 Assembly Street
Columbia, South Carolina 29201-2431
(803) 765-5816 FAX (803) 765-5960

Larry W. Propes
Clerk of Court

November 6, 2003

Nancy D. Jonas
PO BOX 1563
Beaufort, SC 29901

RE: Notice of Appeal and money order #91677739162 for $105.00

Ms. Jonas:

We received your money order in the amount of $105.00 to file your notice of appeal. As of November 1, 2003, the filing fee for a notice of appeal increased to

$255.00; therefore, we are returning your notice of appeal and money order. If you have any questions, please call the Clerk's office at (843) 579-14011.

Thank you for your assistance with this matter.

Sincerely,

Lisa Richberg
Deputy Clerk

4cca-30 REV. 10-09-01 TRANSMITTAL SHEET
(Notice of Appellate Action)

X Notice of Filing United States District Court District Court No. :
for the 9:03-1508-08AJ
District of South Carolina
AT Beaufort
Caption:
Town of Yemassee
V
Nancy Jonas

4. Fees

___USA no fee required
___ paid X__unpaid
___ paid X__unpaid

5. Materials under Seal in District Court:
__yes X No

Party Names under Seal in District Court:
___yes X No

7. TRANSCRIPT

In-Court Hearing held:
___yes X No

Deputy Clerk: Lisa Richberg Phone: 843/579-1411 Date: 1/2/04

Other information not included

UNITED STATES COURT OF APPEALS

FOR THE

FOURTH CIRCUIT

No. 04-1037
CA-03-1508-9-08AJ

TOWN OF YEMASSEE MUNICIPAL COURT
Plaintiff - Appellee

v.

NANCY D. JONAS
Defendant - Appellant

PETITION FOR REHEARING
PETITION FOR REHEARING EN BANC

The Petition for Rehearing includes a suggestion for Petition for Rehearing to be heard *en banc* pursuant to the Judgment of the Court filed March 18, 2004. The Orders on appeal were the Order of the Magistrate Judge Robert S. Carr entered September 26, 2003 and the subsequent Order of District Court Judge Sol Blatt, Jr. entered October 30, 2003 adopting the Order and Recommendation of the U.S. Magistrate Carr after Objections were filed.

The Petition is made to direct the Court's attention to the following situations: a material fact or law has been overlooked in the decision; the opinions of District Judge Blatt, Jr. and Magistrate Judge Carr are in conflict with a decision of the United States Supreme Court, this Court, or another Court of Appeals, and the conflict is not addressed in the opinion; and the proceeding involves one or more questions of exceeding importance. It is the Appellant's judgment that these situations exist and they are briefly summarized in the Statement below.

The material facts or laws overlooked in the decision are that the Municipal Court Judge induced perjured testimony from the police officer; that the Appellant was traveling at the posted speed limit, 40 MPH, on a Sunday afternoon at approximately 3:30 PM; the state municipal and circuit judges combined to obstruct the filing of a lawful appeal corrupting their respective Clerk of Court's Offices; that despite a lack of jurisdiction, the Municipal Judge William Wier submitted the Notice of Unpaid Fine resulting in the suspension and revocation of Appellant's driver's license; State Circuit Court abused its discretion and authority in the issuance of its Order knowing that only Municipal Judge Wier's Return was before the Court and that only his presentation would be presented if appealed further in State court. Meaningful access to courts is an essential aspect of due process, Windsor v. Mcveigh, 93 U.S. 274 (1886); Boddie v. Connecticut, 401 U.S. 371 (1971). The 14th Amendment, U. S. Constitution, Sections 1 and 5, 42 U.S.C. § 1983, and Lugar v. Edmondson

Oil Co., 457 U.S. 922, 929 (1982) particularly relate to due process concerns. Federal law prohibits the foreclosure of all appellate avenues.

The Thompson v. City of Louisville, 362 U.S. 199 (1960) line of cases are relevant because the case had been heard by the highest state authority in which review could be had.

42 U.S.C. § 1983 provides that exhaustion of state remedies is not required for § 1983 litigation, Monroe v. Pape, 365 U.S. 167, 183 (1961). The Supreme Court has repeatedly stated that 42 U.S.C. § 1983 was meant to give the Supreme Court a preeminent role in protecting constitutional rights against harassment and abuse of state court judges. The broad remedial goals of §1983 are to redress all violations of constitutional rights that occur under the aegis of state authority and power. Although § 1983 generally does not create liability for federal officers, the lower courts have consistently have held that federal officers may be sued under § 1983 "when they are engaged in a conspiracy with state officials to deprive constitutional rights," Hampton v. Hanrahan, 600 F.2d 600, 623 (7th Cir. 1979); Knights v. East Baton Rouge Parish School Bd., 735 F.2d 895 (5th Cir. 1984; Tongel v. Usery, 601 F.2d 1091 (9th Cir.1979); Moody v. Hicks, 956 S.W.2d 398 (1997). United States v. Lanier, 33 F.2d 639 (6th Cir. Tenn.), 117 S. Ct. 1219 (1997) is a case where the federal government prosecuted the judge under 18 U.S.C. § 242 for violating the civil rights of a victim under color of law. 18 U.S.C. § 242 makes it a crime to deprive any person of any right secured by the U.S.

Constitution or the laws of the United States under color of law. The case in state court was deliberately manipulated to foreclose all rights at the municipal and circuit level.

The U.S. District Court did not permit discovery. The District Court abuses have been repetitive. 42 U.S.C.§ 1983 is used for constitutional claims of persons whose rights have been violated under color of law by local governments and state and local officers in the United States. The U.S. Magistrate Judge Robert S. Carr in his Order and Recommendation entered September 30, 2003 exceeded his authority pursuant to 28 U.S.C. § 636, Rule 72, FRCP and Long v. Lockheed Missiles and Space Co., 783 F. Supp. 249 (D.S.C. 1992), Charleston Division. Chief Judge Hawkins, U.S. District Court, Charleston Division, held that a Motion to Remand was dispositive outside the power of a magistrate judge. Chief Judge Hawkins' opinion in Long is nationally recognized and cited. The opinion has long stood as precedent for the U.S. Court of Appeals for the Fourth Circuit. There are no local rules governing this matter. Chief Judge Hawkins cited Giangola v. Walt Disney World Co., 753 F. Supp. 148 (D.N.J. 1990).

There is a conflict among the circuits on this issue. The United States Court of Appeals for the First Circuit in Unauthorized Practice of Law Committee v. Gordon, 979 F.2d 11,12-13, (1st Cir. 1992), while noting a conflict among the Circuits declined to resolve the issue @ 13. The Magistrate writes, "in light of the greater weight of recent

authorities holding that an Order of Remand can be entered by a magistrate judge, the undersigned is entering an Order". The Order and Recommendation of the Magistrate, an Article I judge, was clearly erroneous and contrary to law. 28 U.S.C. § 636 requires that a magistrate's actions must not be inconsistent with the Constitution or the laws of the United States. U.S. District Judge Sol Blatt, Jr., an Article III judge, affirmed the actions of U.S. Magistrate Judge Robert S. Carr, and overruled Appellant's Objections dismissing the case for lack of jurisdiction where the case came to the District Court from the U.S. Supreme Court after appeal was taken pursuant to Thompson and other similarly decided cases.

Judge Blatt, Jr. upheld the remand to state court knowing the issues could not be fairly tried in that forum. Because the judicial decisions are in violation of the U.S. Constitution, the proceeding involves one or more questions of exceptional importance.

The Supreme Court in its governance of Article III courts has found that Article III courts must be able to decide *de novo* all questions of law, constitutional issues and jurisdictional facts, St. Joseph's Stockyards v. U.S., 798 U.S. 38, 84 (1936) (Brandis concurring). A substantial question of law is raised because of the improbability of meaningful review. Judge Blatt, Jr. in his first Order entered October 30, 2003 supported the Magistrate's Order of Remand overruling the opinion of Chief Judge of the U.S. District Court Hawkins and a the precedent of

Fourth Circuit before revising his Order to reconsider that assertion.

Justice O'Connor has written that the "essential attributes of judicial power are reserved to Article III courts."

Justice Brennan wrote "the requirements for the exercise of the judicial power must be met at all stages of adjudication".

The facts pertaining to the Petition for Rehearing and possible *en banc* consideration are as follows but may not be solely confined to those facts presented.

The Court has jurisdiction because the Appeal was timely filed. The U.S. District Court Transmittal Sheet (Notice of Appellate Action) indicated "Notice of Filing an appellate action" dated 1/2/04 by Deputy Clerk Lisa Richberg, U.S District Court, District of South Carolina, Charleston Division pursuant to the Order of U.S. District Court Chief Judge Joseph F. Anderson, Jr. entered January 2, 2004. Chief Judge Anderson, Jr. directed "the Clerk shall treat the motion as a notice of appeal for appeal purposes." The Appellant previously served Notice of Appeal on Monday, November 4, 2003 of the Order of Judge Blatt, Jr. entered October 30, 2003 but by letter dated November 6, 2003, Deputy Clerk Richberg returned the Notice of Appeal and the $105.00 filing fee because she said that, "As of November 1, 2003, the filing fee for a notice of appeal increased to $255.00; therefore, we are returning your notice of appeal and money order." When Chief Judge Anderson, Jr. directed the Clerk by Order to file notice of appeal,

the Transmittal Sheet showed Appeal was filed January 2, 2004 without payment of fee until later not delaying the filing until the fee was collected.

Next, the Judgment of this Court found that the Appellant failed to raise any challenges in the informal brief to the District Court's orders denying her post-judgment motions and has thus failed to preserve the issues for review by this Court. The Orders referenced were "(D.S.C. filed Dec. 9, 2003 & entered Dec. 10, 2003; Jan. 2, 2004; Jan. 21, 2004)." The Order of U.S. District Court Chief Judge Joseph F. Anderson, Jr. entered January 2, 2004 directed the Clerk to file Notice of Appeal in the case "for appeal purposes"; a post-judgment Order the Appellant would not challenge. Chief Judge Anderson's Order references the post-judgment motion dated November 26, 2003 including the issues raised there for consideration on appeal.

The Order of the U.S. District Court Chief Judge Joseph F. Anderson, Jr. entered January 21, 2004 advised in closing that the appellant need file nothing further with this judge. Any claim for relief should be filed with the District Judge to whom her case is assigned or with the United States Court of Appeals for the Fourth Circuit."

Because 28 U.S.C. § 47 Disqualification of trial judge to hear appeal, "No judge shall hear or determine an appeal from the decision of a case or issue tried by him." and because there were grounds for disqualification/ recusal of District Judge Sol Blatt, Jr., the Appellant chose to seek relief with the U.S. Court of Appeals for the Fourth Circuit.

The appeal was docketed on 1/08/04. The Court in its Briefing Order requested the Appellant Brief be mailed to the Court no later than 2/2/04. The brief was timely mailed. U.S. District Judge Sol Blatt, Jr. entered an Order on February 9, 2004 after the Appellate Brief had been mailed.

28 U.S.C. § 2072 provides that a Rule may not be used to direct substantive results.

Where a case presents constitutional and civil rights issues, summary dismissal may be preempted. Summary dismissal effectively forecloses all avenues of appeal and serves as a decision on merits that were never considered. Consideration of the justice of a case was of great importance to Chief Justice Hughes in Thompson v. City of Louisville. I hope it will be an influential consideration here.

WHEREFORE, the Appellant prays that the Court will grant the Petition for Rehearing and the Appellant's suggestion that the case be reheard *en banc* and that it will consider all issues and law relevant to the Appellant's case and grant other relief as it may deem proper.

Respectfully submitted,

Nancy D. Jonas
Charles Street
P.O. Box 1563
Beaufort, SC 29901
Tel: 1-800-791-1558
Pager voice mail

March 29, 2004

UNITED STATES COURT OF APPEALS

FOR THE

FOURTH CIRCUIT

No. 04-1037
CA-03-1508-9-08AJ

TOWN OF YEMASSEE MUNICIPAL COURT
Plaintiff - Appellee

v.

NANCY D. JONAS
Defendant - Appellant

BILL OF COSTS

The Appellant desires Taxation of Costs pursuant to 28 U.S.C. § 1920 and the Federal Rules of Civil Procedure, Rule 39, FRCP.

A judge or clerk of any court of the United States may tax as costs the following:

1.) Fees of the Clerk: $150.90 + $255.90.

Total fees - $406.80.

2.) Fees pertaining to Transcription: $ 36.30.

3.) Fees and Disbursements for printing and postage:

Total fees - $280.68.

4.) Fee to process server for service of subpoena: $65.00.

Upon allowance, the costs of $788.78 shall be included in the judgment or decree and be updated from March 30, 2004.

The Bill of Costs was served before April 1, 2004.

Submitted by:_____

Nancy D. Jonas
Charles Street
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Beaufort, SC 29901
Tel: 1-800-791-1558

March 30, 2004

UNITED STATES COURT OF APPEALS

FOR THE

FOURTH CIRCUIT

No. 04- 1037
CA-03-1508-9-08AJ

TOWN OF YEMASSEE MUNICIPAL COURT,
Plaintiff – Appellee,

v.

NANCY D. JONAS,
Defendant – Appellant.

APPELLANT'S MOTION FOR STAY OF MANDATE PENDING PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE UNITED STATES

The Petition for Rehearing/Petition for Rehearing *en banc* was denied April 20, 2004. The Appellant was provided Notice of Denial over the phone on Monday, April 26, 2004 after placing a call to the Clerk's Office to inquire about the status of the Petition. The Appellant had monitored the post office box and as of Wednesday of last week, April 21, 2004, there was no communication from the Court of Appeals. However, on Friday, the Appellant called

the post office and was told there was a letter from the Court which she asked be forwarded if Saturday delivery was possible but the letter was not delivered on Saturday though mail is easily transported between nearby locations. The Court's weekend number was called but the phone was turned off. There was no neglect present to discovering the disposition of the case by the Court and this Motion is presented in a timely manner. The Mandate issues 7 days from the date of denial of Rehearing or April 28, 2004, pursuant to Rule 41 (a) allowing one day to prepare the motion to stay Mandate. The Motion must be received by the Court before the Mandate issues on Wednesday. The Clerk's Office indicated that submitting the Motion by fax is not an option. The Motion is prepared absent the opportunity to evaluate and clarify concerns that the Court may have raised in its Order denying rehearing which seems fundamentally unfair.

The Motion for Stay of the Mandate is pursuant to the Federal Rules of Appellate Procedure, Rule 41(b). The Appellant declares intent to file a Petition for a Writ of Certiorari to the Supreme Court of the United States pursuant to 28 U.S.C. § 2101.

There are substantial reasons why the Motion is appropriate. Both the U.S. Magistrate Judge Robert S. Carr and the U.S. District Court Judge Sol Blatt, Jr. acted contrary to federal law including 28 U.S.C. § 636, the 14th Amendment, U.S. Constitution, and 42 U.S.C. § 1983. While the matter was pending in federal court, they allowed the State to ignore 28 U.S.C. § 1446(d) depriving the Appellant of a stay as

a matter of law. The result is that the state unlawfully and willfully caused harm to the appellant. Issues pertaining to judicial conduct will be brought to the attention of the Judicial Conference. Judge Blatt upheld the U.S. Magistrate's remand knowing the case cannot be fairly tried in state court where perjured testimony was knowingly used. Because the judicial decisions are in violation of federal constitutional law, the preceding involves one or more questions of exceptional importance for which a Stay is appropriate. As in Thompson v. City of Louisville, 362 U.S. 199 (1960) the actions of the municipal court and subsequently the district court were clearly in violation of federal constitutional law and are an evasion of law governing the case. A Stay may be granted where it is clear that denial will result in irreparable harm.

42 U.S.C. § 1983 was particularly enacted to address abuse of constitutional rights by state judicial authority and to authorize injunctive relief. Mitchell v. Foster, 407 U.S. 225 (1972) interpreted the federal statute in case law. State court challenged the jurisdiction of federal court but the federal court did not act to enjoin to preserve and control its jurisdiction under the second exception to the Anti-Injunction Act. The federal court has not recognized the imposition of excessive fines imposed in violation of the 8th Amendment to the federal constitution where the fines are not supported by the facts. A substantial question of law is raised by the improbability of meaningful review. The Petition for Certiorari to the Supreme Court will invoke that

Court's supervisory jurisdiction under Article III of the U.S. Constitution as well as Article VI in order to address the judicial conduct. There is a federal issue presented by the conflict of opinion between the circuits on whether a U.S. Magistrate may issue an Order of Remand. The U.S. Magistrate Judge Robert S. Carr clearly exceeded his authority as an Article I judge and his assertion that he may order remand defied Long v. Lockheed Missiles and Space Co., 783 F. Supp. 249 (D.S.C. 1992) of the Chief U.S. District Court Judge Hawkins, Charleston District, which the Fourth Circuit has let stand as the position of the Fourth Circuit.

There is good cause for the Court to suspend the Mandate pending Certiorari to the Supreme Court of the United States and the Appellant prays the Court will grant the Motion for a Stay of the Mandate or in the alternative suspend the Mandate of its own motion. There is a reasonable expectation the case will be consolidated with a case now pending before the United States Supreme Court. As required, the Appellant certifies that the Motion to Stay Mandate will be served upon the parties of record.

Respectfully submitted,

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